

AGREEMENT
FOR
ADMINISTERING U.S. DEPARTMENT OF TRANSPORTATION
FINANCIAL ASSISTANCE FOR TRANSPORTATION PLANNING
BETWEEN
THE STATE OF ALABAMA
AND THE
REGIONAL PLANNING COMMISSION of GREATER BIRMINGHAM
CPMS Ref# 100073870

PART ONE (1): INTRODUCTION

This agreement is made and entered into by and between the State of Alabama, acting through the Alabama Department of Transportation, hereinafter referred to as STATE; and the Regional Planning Commission of Greater Birmingham, hereinafter referred to as COMMISSION; in cooperation with the Federal Transit Administration, hereinafter referred to as FTA; and the Federal Highway Administration, hereinafter referred to as FHWA; and

WHEREAS, 23 U.S.C. 134 and 49 U.S.C. 5303 require that each urbanized area have a comprehensive, cooperative, continuing transportation planning process (commonly referred to as the "3-C" Process); and

WHEREAS, 23 U.S.C. 104 (f) and 49 U.S.C. 5303 authorize certain funds (commonly referred to as FHWA Planning funds and FTA 5303 Planning funds respectively) to be made available to designated transportation planning agencies for supporting the "3-C" Process; and

WHEREAS; the COMMISSION has been selected by principal elected officials as the designated transportation planning agency for the Birmingham urbanized area; and

WHEREAS, the STATE receives funds from FHWA and FTA, which include FHWA Planning Funds and FTA 5303 Planning funds to be made available to the COMMISSION for Transportation Planning for the Birmingham urbanized area; and

WHEREAS, the STATE receives funds from FHWA and FTA to be made available to the COMMISSION for project design, construction, utility work and the purchase of right-of-way for the Birmingham urbanized area; and

WHEREAS, the STATE and the COMMISSION desire to cooperate in the Agreement for administering U.S. Department of Transportation Financial Assistance for Transportation Planning; and

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

PART TWO (2): FUNDING PROVISIONS

- A. **Funding:** Funding for this agreement is subject to availability of Federal Aid funds at the time of authorization. The STATE will not be liable for Federal Aid funds in any amount.

- B. It is further understood that this is a cost reimbursement program and no Federal funds will be provided to the COMMISSION prior to accomplishment of the work for which it is requested. Furthermore, no Federal funds will be reimbursed for work performed prior to authorization.
- C. Any Planning funds provided to the COMMISSION under this agreement will be used for transportation planning related activities and will be in accordance with the most current approved Unified Planning Work Program (UPWP).
- D. Any cost incurred by the COMMISSION relating to the UPWP that is determined to be ineligible for reimbursement by FHWA, or in excess of the limits previously stated, will not be an eligible cost and will be borne and paid by the COMMISSION.
- E. It is understood that the work is to be done on an actual cost basis. Payment will not exceed the total estimated funds budgeted in the most current approved UPWP.
- F. A Metropolitan Planning Organization's (MPO) UPWP may include funds carried over from prior fiscal years. If the MPO carries more funding from the year immediately prior than what is determined to be available after the final invoice, the MPO should amend the current UPWP to reduce the amount of carryover.
- G. All costs for work performed under the terms of this agreement will be financed, when eligible for federal participation, with FHWA Planning and/or FTA 5303 Planning funds and matching funds.
- H. The COMMISSION agrees that in the event the FHWA or FTA determines, due to rules and/or regulations of FHWA or FTA, that federal funds must be refunded, the COMMISSION will reimburse and pay to the STATE a sum of money equal to the total amount of federal funds to be refunded to FHWA or FTA.
- I. **Time Limit:** Charges may be made to the Unified Planning Work Program upon written authorization to proceed from FHWA directed to the COMMISSION.
- J. Any eligible costs incurred by the COMMISSION on or after October 1, 2021, will be reimbursable under this agreement.

PART THREE (3): PROJECT SERVICES

- A. The COMMISSION and STATE are responsible for cooperatively developing financial plans that support the 3C Process. The Long-Range Transportation Plan (LRTP) shall be fiscally constrained pursuant to 23 CFR 450.324. Inflation rates shall reflect year-of-expenditure dollars. To support the development of the LRTP, the State shall provide the COMMISSION with a long-range forecast of expected State and Federal transportation revenues for the Metropolitan Planning Area. The State will also provide the COMMISSION with a listing of projects for which ALDOT has committed the aforementioned revenue. The MPO will, in turn, provide a LRTP that meets the requirements of 23 CFR 450.324.
- B. The Transportation Improvement Program (TIP) shall be fiscally constrained pursuant to 23 CFR 450.326. Inflation rates shall reflect year-of-expenditure dollars. To support the development of the TIP, the State shall provide a list of

planned projects. This list may be provided using ALDOT's Comprehensive Project Management System (CPMS), therefore requiring the COMMISSION to access and print the list of planned projects. The MPO will, in turn, provide a TIP that meets the requirements of 23 CFR 450.326.

- C. Within 90 days after the close of the Federal fiscal year, the State, Public Transportation Provider(s), and the COMMISSION shall cooperatively develop a listing of projects for which funds under 23 USC or 49 USC Chapter 53 were obligated in the preceding program year. This Annual Listing of Obligated Projects shall include all Federally funded projects authorized in the preceding program year, including all project phases. Each phase shall, at a minimum, include TIP project description, project reference ID, project sponsor, and other items requested by ALDOT. The Annual Listing of Obligated Projects will also identify, for each phase, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining required to complete the entire project. The COMMISSION shall publish the Annual Listing of Obligated Projects in accordance with the MPO's Public Participation Plan.
- D. All work performed pursuant to this agreement will be completed to the satisfaction of the STATE within the time frame established by the most current approved Unified Planning Work Program.
- E. The use of planning funds by the COMMISSION for out-of-state travel must be approved by the STATE two weeks prior to the travel date. No approval will be required for in-state travel. The COMMISSION in Alabama will operate according to the General Services Administration (GSA) Rate for both in-state and out-of-state travel. The cost to stay at a hotel that is hosting the event will be reimbursable, even if above the GSA Rate. Other exemptions will be reviewed on a case by case basis. Required invoice documentation will be as follows:
 - 1. Meals & Incidentals – no documentation required;
 - 2. Mileage – map showing travel route;
 - 3. Air Travel – receipt required;
 - 4. Hotel – receipt required if more than GSA Rate;
 - 5. Registration – receipt required
- F. The purchase of all equipment financed in whole or in part pursuant to this agreement will be in accordance with STATE and Federal procedures, including normal STATE competitive bidding procedures, where appropriate. All purchases over Fifteen Hundred Dollars (\$1,500.00) must be approved by the STATE, in advance, in writing, to be eligible for reimbursement, unless it is detailed in the current UPWP and final cost is within 20% of the cost specified in that UPWP. All purchases over Five Thousand Dollars (\$5,000) must be approved by the FHWA, in advance, in writing, to be eligible for reimbursement, unless it is detailed in the current UPWP and final cost is within 20% of the cost specified in that UPWP.
- G. The COMMISSION must maintain a detailed inventory of equipment with a current per-unit fair-market value in excess of \$5,000, in accordance with 2 CFR 200.33, 2 CFR 200.94, 2 CFR 200.313, 2 CFR 200.439, and other related articles.

This inventory must include any equipment financed in whole or in part with FHWA Planning funds and FTA 5303 Planning funds. A copy of this inventory must be updated every two years and should remain on file with the COMMISSION.

- H. Any documents or other printed material produced under this agreement will be submitted to the STATE for proofreading and technical editing prior to their publication for final printing. A sufficient number of copies of such documents or other printed material will be published.
- I. The COMMISSION will submit to the STATE, at such time as the STATE may require, such progress reports, financial statements, data, records, contracts, and other documents as may be deemed necessary by the STATE.
- J. The use of any planning funds provided herein in accordance with the most current approved STATE consultant selection procedures.
- K. The COMMISSION will perform or have performed all services required to fulfill the purposes of this agreement.

PART FOUR (4): CONTRACT PROVISIONS

- A. The COMMISSION will not assign any portion of their work to be performed under this agreement, or execute any contract, amendment or change order hereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this agreement without prior written authorization of the STATE. Any subcontract under this agreement must include all required and/or applicable causes of this agreement.
- B. If the COMMISSION fails to fulfill in a timely and proper manner its obligations as stipulated in this agreement, or if the funds from FHWA and/or FTA under which this agreement is made are terminated by FHWA or FTA, or if any party to this agreement is unable to participate in the funding of costs as set forth herein, the STATE will have the right to terminate this contract by giving thirty days prior written notice to the COMMISSION of such termination and specifying the effective date thereof. Said notice will stipulate the reasons for termination and will be mailed by certified mail. If the COMMISSION is unable or unwilling to comply with such additional conditions as may be lawfully imposed by the STATE or FHWA or FTA on the grant or agreement under which the COMMISSION is performing, the COMMISSION will have the right to terminate the agreement by giving thirty days prior written notice to the STATE specifying the effective date thereof. Said notice shall stipulate the reasons for termination and will be mailed by certified mail. If termination necessitates disposal of property, all property will be disposed strictly in accordance with all STATE and Federal procedures. The COMMISSION will be entitled to compensation for any unreimbursed eligible expenses incurred.
- C. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the COMMISSION and the STATE, or otherwise arising between the parties to this agreement, will be referred to the Director of the State Department of Transportation and the Chairman of the local

Metropolitan Planning Organization for a negotiated settlement.

- D. The COMMISSION will be responsible at all times for the work it performs under this Agreement and especially the COMMISSION will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees, in both their official and individual capacities, and agents of each, from and against any and all claims, actions, damages, loss, liabilities, including attorney's fees and expenses whatsoever or any amount paid in compromise thereof arising out of or in connection with its performance of the work under this Agreement and this project and from and against these at any time arising out of or in connection with the performed work and project.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The COMMISSION will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. The COMMISSION may not invoice the STATE more frequently than once per month. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Local Transportation Bureau for payment. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized.
- B. The COMMISSION should submit a final invoice, as well as an Annual Report, for the work performed under a Unified Planning Work Program. Both documents should be received on or before the 3rd Monday in November.
- C. The COMMISSION will not assign any portion of their 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 its rights and responsibilities under this agreement without prior written authorization of the STATE.
- D. The COMMISSION will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE. The COMMISSION must furnish to the STATE a copy of their approved indirect cost allocation plan two weeks prior to the submission of the first invoice.
- E. All charges will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.
- F. The COMMISSION will report to the STATE the progress of the work performed under the UPWP in such manner as the STATE may require. The COMMISSION will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect as may be requested by the STATE. The COMMISSION invoice submission should include the following:

1. Cover Letter showing, at a minimum, the requested dollar amount, time period, and project number;
 2. Form F-25 or other form used by the ALDOT Finance Bureau;
 3. Recap Sheet showing, at a minimum, the total funds earned, the Federal funds earned, and the local match;
 4. Detailed information concerning salaries, fringe benefits, and indirect expenses;
 5. Detailed information concerning other charges;
 6. Summary report showing amount expended to-date as compared with the current UPWP. This page should be itemized by task or sub-task;
 7. Supplemental documentation for out-of-state trips to include the approval letter from the State (and FHWA if applicable) as well as the request letter and documentation submitted to the State;
 8. Supplemental documentation for in-state trips to include an expense report showing dates, destination, reason for trip, and GSA rate;
 9. Supplemental documentation for items over \$1,500 to include the approval letter from the State (and FHWA if applicable) as well as the request letter and documentation submitted to the State. Applicable pages from the approved Unified Planning Work Program may be substituted if no approval letter is required (see Part 3, Item F);
 10. Supplemental documentation for advertisements to include a copy or screenshot of the advertisement;
 11. Supplemental documentation for contract work to include a scope-of-work for the project;
 12. Supplemental documentation for membership dues to include the name and purpose of the organization for which membership is being requested;
 13. A list of other expenses in summarized form (i.e. postage, copies and printing, local travel, office supplies, meeting supplies, food for meetings)
- G. The COMMISSION will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the UPWP and any and all data and records which in any way relate to the UPWP or to the accomplishment of the UPWP. The COMMISSION will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the COMMISSION will give its full cooperation to those persons or their authorized representatives, as applicable.
- H. The COMMISSION will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.
- I. The COMMISSION will retain all books, records, and other documents relative to

this Agreement for a minimum of five (5) 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 the right to examine any of said materials at all reasonable times during said period.

- J. A Single Audit will be performed on a yearly basis, in accordance with requirements of 2 CFR Part 200 and the Rules of the Department of Examiners of Public Accounts, for all non-Federal entities that expend more than \$750,000 during their fiscal year. The COMMISSION will submit to the Federal Audit Clearinghouse (FAC) the data form and reporting package described in 2 CFR 200.512(d). The COMMISSION must submit to ALDOT a copy of any management letters issued by an auditor. The COMMISSION will keep one copy of the above-mentioned data collection form and reporting package on file for three years from the date of submission to the FAC.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the COMMISSION is not an agent of the STATE, its officers, employees, agents, or assigns. The COMMISSION is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. 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.
- C. No member, officer, or employee of the STATE or of a local public body during his tenure or one year thereafter will have any interest, direct or indirect, in this contract or the proceeds thereof.
- D. No member of, or delegate to the Congress of the United States, will be allowed to any share or part of this contract or to any benefit arising therefrom.
- E. The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. The agreement for administering FHWA Planning funds and FTA 5303 Planning funds between the COMMISSION and the STATE executed on the **18th day of September 2008** is hereby made null and void.
- H. Nothing will be construed under the terms of this agreement by the STATE or the COMMISSION that will cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- I. Exhibits A, E, H, M, and N are hereby attached to and 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 duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

By: [Signature]
Executive Director (Signature)

Christy Bell
Print Name of Executive Director

By: [Signature]
Chairman, Regional Planning Commission of Greater Birmingham

EUNICE JONASOW ROGERS
Print Name of Chairman

(AFFIX SEAL)

This agreement has been legally reviewed and approved as to form and content.

By: [Signature]
William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

[Signature]
Bradley L. Lindsey, P.E.
State Local Transportation Engineer

[Signature]
Edward N. Austin, P. E.
Chief Engineer

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

[Signature]
John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS 12th DAY OF October, 2021.

[Signature]
KAY IVEY
GOVERNOR, STATE OF ALABAMA

WHEREAS, 23 U.S.C. 134 and 49 U.S.C. 5303 require that each urbanized area have a comprehensive, cooperative, and continuing transportation planning process (commonly referred to as the "3-C" Process); and

WHEREAS, 23 U.S.C. 105(f) and 49 U.S.C. 5303 authorize certain funds (commonly referred to as FHWA Planning Funds and FTA 5303 Planning Funds respectively) to be made available to designated transportation planning agencies for supporting the "3-C" Process; and


WHEREAS, the Regional Planning Commission of Greater Birmingham has been selected as the designated transportation planning agency for the Birmingham urbanized area; and

WHEREAS, the State of Alabama receives funds from the Federal Highway Administration and the Federal Transit Administration which include FHWA Planning funds and FTA 5303 Planning funds to be made available to the designated agency for transportation planning in the Birmingham urbanized area;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REGIONAL PLANNING COMMISSION of GREATER BIRMINGHAM, that the Chairman be and is hereby authorized to execute, and the Executive Director be and is hereby authorized to attest, an agreement with the State of Alabama for administering U.S. Department of Transportation Financial Assistance for Transportation Planning.

I, the undersigned qualified and acting Executive Director of the Regional Planning Commission of Greater Birmingham, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the COMMISSION named therein, at a regular meeting of such COMMISSION held on the 15th day of September, 2021, and that such resolution is on file in the Executive Director's Office.

ATTESTED:



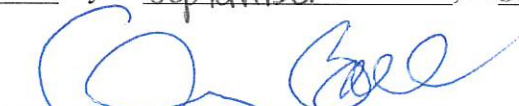
Executive Director



Chairman

15th day of September, 2021, and that such resolution is of record in the Minute Book of the COMMISSION.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the COMMISSION on this 15th day of September, 2021.



Executive Director

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EXHIBIT H

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EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

EXHIBIT H

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- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

EXHIBIT H

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records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

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The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

EXHIBIT H

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- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

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:

- a. 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.
- b. 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.

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

- 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 CITY 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, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY 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.