

**MINUTES, LIMESTONE COUNTY COMMISSION, DECEMBER 17, 2018**

The Limestone County Commission met in a regular meeting today, at 10:00 a.m. at the Clinton Street Courthouse Annex, 100 South Clinton Street, Athens, Alabama.

Present: Daryl Sammet, Steve Turner, Jason Black, and Ben Harrison. Absent: None. Collin Daly, Chairman presided.

The meeting began with the Pledge of Allegiance.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to approve the minutes of November 28, December 3 & 12, 2018.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Steve Turner, aye; Daryl Sammet, aye; and Jason Black, aye. Motion carries unanimously.

**MOTION** was made by Jason Black and seconded by Daryl Sammet to approve the following claims

11/30/18	Check # 51449 – 51538	\$1,237,608.60
12/07/18	Check # 51539 – 51623	<u>\$ 292,240.44</u>
	TOTAL	\$1,529,849.04

with detailed claims of the above being on file for review upon request to the County Administrator.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Daryl Sammet, aye; Steve Turner, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Jason Black to approve the following resolution for safety improvements on Easter Ferry Road.

**RESOLUTION**

**LIMESTONE COUNTY**

**STATE OF ALABAMA**

Project No. LCP 42-171-18

WHEREAS, the County Commission of Limestone County, Alabama, is desirous of constructing or improving, by force account, contract or both, a section of road included in the Limestone County Road System and described as follows:

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**Safety improvement on Easter Ferry Road from the Sulphur Creek Bridge approximately 1150 ft north and west through the curve as described herein. Resurface, correct super elevation, clear trees, widen and pave shoulders and place striping and pavement markers using Highway Safety Improvement Program Funds.**

WHEREAS, the County agrees to all of the provisions of the county-wide agreement executed between the State and the County covering preliminary engineering by State forces and equipment on the project, and

WHEREAS, the County agrees to all of the provisions of any agreement which has been executed or will be executed covering the construction of the project.

Done at the regular session of the Commission of Limestone County, this 17<sup>th</sup> day of December 2018.

LIMESTONE COUNTY COMMISSION

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Jason Black to suspend the Rules of Order to add an agreement to the agenda.

The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Daryl Sammet to authorize the Chairman to execute the following Preliminary Engineering & Construction Agreement for a Highway Safety Improvement Program Project on Easter Ferry Road.

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**PRELIMINARY ENGINEERING  
AND CONSTRUCTION  
AGREEMENT FOR A  
HIGHWAY SAFETY IMPROVEMENT PROGRAM PROJECT  
BETWEEN THE STATE OF ALABAMA  
AND  
THE LIMESTONE COUNTY COMMISSION  
Project No. HSIP-4219()  
County Project No. LCP 42-171-18  
CPMS Ref# 100069427 and 100069430  
PART ONE (1): INTRODUCTION**

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 Limestone County Commission, Alabama, (FEIN 63-6001607) hereinafter referred to as the COUNTY.

WHEREAS, the STATE and the COUNTY desire to cooperate in the safety improvements on Easter Ferry Road on a curve north of Sulphur Creek; Project# HSIP-4219( ); LCP 42-171-18; CPMS Ref# 100069427 and CPMS Ref# 100069430;

NOW, THEREFORE, it is mutually agreed between the STATE and the COUNTY as follows:

**PART TWO (2): FUNDING PROVISIONS**

- A. Project Funding: Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. Cost for the project will be financed, when eligible for Federal participation, on the basis of 90 percent Highway Safety Improvement Program funds (HSIP) and 10 percent CITY funds. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in construction costs, the amount of Federal Aid funds will be the amount stated below, or 90% of eligible costs, whichever is less.
- B. The estimated cost and participation by the various parties is as follows:

PRELIMINARY ENGINEERING

FUNDING SOURCE	ESTIMATED COSTS
Federal HSIP Funds	\$20,500.00
County Funds	<u>\$ 2,277.78</u>
TOTAL (Incl. Indirect Cost)	\$22,777.78

CONSTRUCTION

FUNDING SOURCE	ESTIMATED COSTS
Federal HSIP Funds	\$202,700.00
County Funds	<u>\$ 22,522.22</u>
TOTAL (Incl. Indirect Cost)	\$225,222.22

It is further understood that this is a cost reimbursement program and no Federal funds will be provided to the COUNTY prior to accomplishment of the work for which it is requested. Furthermore, no Federal funds will be reimbursed for work performed prior to project authorization.

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Any cost incurred by the COUNTY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA) or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the COUNTY.

- C. Time Limit: This project will commence upon written authorization to proceed from the STATE directed to the COUNTY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

### PART THREE (3): PROJECT SERVICES

- A. The COUNTY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the COUNTY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the COUNTY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the COUNTY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the COUNTY with any condemnation or other legal proceedings being performed by the COUNTY.

The COUNTY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE and FHWA. The STATE and FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the COUNTY from the sale or lease of property.

- B. The COUNTY will adjust and/or relocate all Utilities in conflict with the project improvements. Associated Utility costs will be an eligible cost to the project, as approved by the application.

The COUNTY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures.

- C. The COUNTY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with COUNTY forces or with a consultant approved by the

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STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will be an eligible cost to the project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the COUNTY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the COUNTY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the COUNTY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The COUNTY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the COUNTY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the COUNTY that failure of the COUNTY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for Procedures for Processing State and Industrial Access Funded County and City Projects, and attached hereto as a part of this Agreement prior to the COUNTY letting the contract.

- D. The COUNTY will furnish all construction engineering for the project with COUNTY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 1 5%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the project.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The COUNTY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

### **PART FOUR CONTRACT PROVISIONS**

- A. The COUNTY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the COUNTY to proceed.
- B. Associated Construction costs will be an eligible cost to the project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the COUNTY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The COUNTY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the COUNTY, the COUNTY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The COUNTY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The COUNTY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the COUNTY will provide all bids to the STATE with a recommendation for award. The COUNTY shall not award the contract until it has received written approval from the STATE.

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The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the COUNTY 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 this project without cost to the State or this project. The COUNTY will be the permittee of record with ADEM for the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The COUNTY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.
- The COUNTY will secure all permits and licenses of every nature and description applicable to the project in any manner, and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.
- D. The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.
- E. The COUNTY shall be responsible at all times for all of the work performed under this agreement and, as provided in Ala. Code 1 1-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.
- For all claims not subject to Ala. Code 11-93-2 (1 975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.
- F. The COUNTY 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 COUNTY, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the COUNTY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

### **PART FIVE ACCOUNTING PROVISIONS**

- A. The COUNTY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The COUNTY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

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- B. The COUNTY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- C. The COUNTY 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.  
All charges to the Project 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.  
The COUNTY will report to the STATE the progress of the project in such manner as the STATE may require. The COUNTY will also provide the STATE any information requested by the STATE regarding the project. The COUNTY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.  
The COUNTY 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 project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The COUNTY 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 COUNTY will give its full cooperation to those persons or their authorized representatives, as applicable.  
The COUNTY will comply with all audit requirements set forth in the Federal Office of Management and Budget (OMB) circular A-128 or A-133 whichever is applicable.
- D. The COUNTY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.
- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the COUNTY, for any audit performed on this project in accordance with Act No. 94-414.

### PART SIX MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement shall not be constituted as a debt of the State of Alabama in violation of Article I 1 , Section 213 of the Constitution of Alabama, 1 901, as amended by Amendment 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. 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

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be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

- D. No member, officer, or employee of the COUNTY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this 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. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. 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:

Limestone County, Alabama

By: \_\_\_\_\_  
County Clerk (Signature)

By: \_\_\_\_\_  
As Chairman (Signature)

\_\_\_\_\_  
Type Name of Clerk

\_\_\_\_\_  
Type Name of Chairman

(AFFIX SEAL)

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

\_\_\_\_\_  
William F. Patty,  
Chief Counsel

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
D.E. (Ed) Phillips, P.E.  
State Local Transportation Engineer

\_\_\_\_\_  
Don T. Arkle, P. E.  
Chief Engineer

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

\_\_\_\_\_  
John R, Cooper, Transportation Director

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THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
KAY IVEY  
GOVERNOR, STATE OF ALABAMA

**RESOLUTION NUMBER** \_\_\_\_\_

BE IT RESOLVED, by the Limestone County Commission as follows:

That the County enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

Safety improvements on Easter Ferry Road on a curve north of Sulphur Creek; Project# HSIP-4219( LCP 42-171-18; CPMS Ref# 100069427 and CPMS Ref# 100069430;

Which agreement is before this Commission, and that the agreement be executed in the name of the County, by the Chairman for and on its behalf and that it be attested by the County Clerk and the official seal of the County be 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 County.

I, the undersigned qualified and acting Clerk of Limestone County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County named therein, at a regular meeting of such Commission held on the 17<sup>th</sup> day of December 2018 and that such resolution is on file in the County Clerk's Office.

ATTESTED:

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chairman

17<sup>th</sup> day of December 2018, and that such resolution is of record in the Minute Book of the County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this 17<sup>th</sup> day of December 2018.

\_\_\_\_\_  
County Clerk

(AFFIX SEAL)

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## 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 COUNTY upon an equitable basis. The value of the work performed by the COUNTY 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 COUNTY 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 COUNTY is put in performing the work to be terminated in proportion to the amount of expense to which the COUNTY 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 COUNTY prior to the termination, no consideration will be given to profit, which the COUNTY 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 COUNTY, the value of the work performed by the COUNTY 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.

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### 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 COUNTY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

### EXHIBIT H

### EOUAL RIGHTS PROVISIONS

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

a. **Compliance with Regulations**

The COUNTY 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

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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. 12131-12138) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- 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 COUNTY 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 COUNTY 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 COUNTY 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 COUNTY 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 COUNTY of the COUNTY'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 COUNTY 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 Page 3 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 COUNTY is in the

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exclusive possession of another who fails or refuses to furnish this information, the COUNTY 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 COUNTY'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 COUNTY under contract until the COUNTY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

**f. Incorporation of Provisions**

The COUNTY 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 COUNTY 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 COUNTY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the COUNTY 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 V II of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal Transit laws at 49 U.S.C. 5332, the COUNTY 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. 1 1246, "Equal Employment Opportunity," as amended by Executive Order No. 1 1375, "Amending Executive Order 1 1246 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.

The COUNTY 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 COUNTY 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 COUNTY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the COUNTY 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 COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to

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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 COUNTY 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 COUNTY 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 COUNTY 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.
- b. The COUNTY, in accordance with the status of COUNTY as an independent contractor, covenants and agrees that the conduct of COUNTY will be consistent with such status, that COUNTY will neither hold COUNTY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that COUNTY 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 COUNTY.

### **COUNTYS' CERTIFICATIONS**

The COUNTY 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 COUNTY. The COUNTY 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 COUNTY at the time of execution of the AGREEMENT. The COUNTY 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 COUNTY 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 COUNTY agrees that a meal allowance shall be limited to COUNTY employees while in travel status only and only when used in lieu of a per diem rate.

The COUNTY 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 COUNTY 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.

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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 I 1, Section 213 of the Constitution of Alabama, 1 901, 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.

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

### **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 Region and notification from the Region that advertisement for bids can be made, or, in the case of force account 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 Region 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 Region 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 Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an in place annual bid, the County/City will furnish the Region 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 Region the three lowest bids with their recommendation for award. The Region 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



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**MOTION** was made by Steve Turner and seconded by Jason Black to award the following bid proposals to the lowest responsible bidder meeting specifications as follows:

<b>Proposal No.</b>	<b>Item</b>	<b>Awarded to</b>	<b>Amount</b>
2667	Security Envelopes (County Commission)	Currie Systems	\$298.55
2668	Gasoline & Diesel (Jan. 6, 2019 – April 5, 2019)	W. H. Thomas Oil	30¢ margin over rack
2669	Printing Tag Mail Notices (License Commission)	IMS Enterprises	\$15,300.00

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Jason Black, aye; Daryl Sammet, aye; and Ben Harrison, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Jason Black to promote Hope Beaty to Title Clerk in the License Commissioner’s Office.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Steve Turner to approve the following subdivisions:

<b>Name</b>	<b>S/D Type</b>	<b>Approval Type</b>	<b>Lots</b>	<b>District</b>	<b>Location</b>
Bowman Acres, Phase I	Minor	Preliminary & Final	24	2	Northeast of Brown Road & Bledsoe Road
FN Malone Estates Sub. replat lots 5 & 6 to be further known as lot 6A	Minor	Preliminary & Final	1	4	Approx. 450’ south of Easter Ferry Road & Edgewood Road intersection

The Chairman asked if there was any discussion. Commissioner Turner stated he had received a call asking what road the main point of access for the Bowman Acres subdivision would be. County Engineer Marc Massey said every lot would have main access facing either Brown Road or Bledsoe Road since it’s a minor subdivision. The caller expressed concern about Brown Road being able to handle the increased traffic from the new homes and asked if any stipulations could be put on the builders to widen the road. Marc stated the county subdivision regulations doesn’t have any requirements other than right-of-way. If there is no right-of-way, they are required to give the county the additional right-of-way on their side of the property; however, there are no stipulations to require the builder to widen the road. The Administrator called the roll.

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Ben Harrison, aye; Steve Turner, aye; Daryl Sammet, aye; and Jason Black, aye. Motion carries unanimously.

**MOTION** was made by Ben Harrison and seconded by Jason Black to approve to sell a Gooseneck Trailer for District 4 on GovDeals.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

Commissioner Sammet wished everybody a safe and happy holiday.

**MOTION** was made by Steve Turner and seconded by Ben Harrison to approve an all-way stop at the intersection of Newby and Gray Roads.

The Chairman asked if there was any discussion. Commissioner Turner stated traffic counters data backed up the need for the all-way stop. Some of the safety concerns had been speed and this should help. The Administrator called the roll. Steve Turner, aye; Ben Harrison, aye; Daryl Sammet, aye; and Jason Black, aye. Motion carries unanimously.

Commissioner Black wished everybody a safe and happy holiday.

Commissioner Harrison wished everybody a safe and happy holiday. He issued a reminder for motorist to use headlights when foggy. He announced a portion of Elk Estates would be closed today while installing 24" arch pipe around the 1700 block. Dogwood Lane has been designated the detour route.

Chairman Daly wished everybody a safe and Merry Christmas and thanked everyone for their attendance.

Recessed at 10:12 a.m. until 10:00 a.m. on Wednesday, January 2, 2019, at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, Alabama.