

Council Member \_\_\_\_\_ introduced the following Resolution, which was seconded by Council Member \_\_\_\_\_.



**RESOLUTION 042224-F**

**RESOLUTION AUTHORIZING AGREEMENT WITH THE ALABAMA DEPARTMENT OF TRANSPORTATION (ALDOT) AND SHELBY COUNTY FOR PROJECT NHF-I065(543) ADDING LANES AND BRIDGE REPLACEMENT ON INTERSTATE 65**

**BE IT RESOLVED**, by the City of Alabaster as follows:

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

**Additional lanes and bridge replacement on 1-65 from .56 miles south of Buck Creek to 1 mile north of SR-3 (US-31), over CSX railroad (BIN 006489 and 006490), over CR-26 (BIN 006491 and 006492), over Old US-31 and CSX railroad (BIN 006493 and 006494); Project# NHF-I065(543); CPMS Ref# 100055335.**

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

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

**PASSED, ADOPTED, AND APPROVED THIS 22ND DAY OF APRIL 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED:

\_\_\_\_\_  
Scott Brakefield, Mayor

I, the undersigned qualified and acting clerk of the City of Alabaster Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council named therein, at a regular meeting of such Council held on the **22<sup>nd</sup> day of April 2024**, and that such resolution is of record in the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Alabaster on this **22<sup>nd</sup> day of April 2024**.

\_\_\_\_\_  
City Clerk

**CONSTRUCTION  
AGREEMENT  
FOR A  
FEDERAL AID  
PROJECT**

**BETWEEN THE STATE OF ALABAMA  
THE  
SHELBY COUNTY COMMISSION  
AND THE  
CITY OF ALABASTER**

**Project No. NHF-I065(543)  
CPMS Ref# 100055335**

**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; the Shelby County Commission, Alabama, (FEIN 63-6001694) hereinafter referred to as the COUNTY; and the City of Alabaster, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE, the COUNTY, and the CITY desire to cooperate in the additional lanes and bridge replacement on I-65 from .56 miles south of Buck Creek to 1 mile north of SR-3 (US-31), over CSX railroad (BIN 006489 and 006490), over CR-26 (BIN 006491 and 006492), over Old US-31 and CSX railroad (BIN 006493 and 006494); Project# NHF-I065(543); CPMS Ref# 100055335.

NOW, THEREFORE, it is mutually agreed between the STATE, the COUNTY, and the CITY 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. County funds shall be limited to \$6,250,000.00 for this project. City funds shall be limited to \$1,750,000.00 for this project. Any overruns in project costs will be borne by State Federal Aid with State funds as match. In the event of an overrun in construction costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.

- B. The estimated cost and participation by the various parties is as follows:

FUNDING SOURCE	ESTIMATED COSTS
Federal NH Funds	\$ 55,320,899.20
County Funds	\$ 6,250,000.00
City Funds	\$ 1,750,000.00
State Funds	\$ 5,830,224.80
TOTAL (Incl CE&I & Indirect Cost)	\$ 69,151,124.00

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It is further understood that this is a cost reimbursement program and no federal funds will be provided to the COUNTY and CITY 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.

Any cost incurred by the COUNTY and CITY 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 and CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed.

**PART THREE (3): PROJECT SERVICES**

- A. The STATE will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost as part of this Agreement. 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 STATE in accordance with applicable Federal and state laws, regulations, and procedures.

Acquisition of real property by the STATE 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.

The STATE 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 or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the COUNTY or CITY from the sale or lease of property.

- B. The STATE will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will not be an eligible cost as part of this Agreement.
- C. The STATE will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with STATE forces or with a consultant. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost as part of this Agreement.
- D. The STATE will furnish all construction engineering for the project with STATE forces or with a consultant as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The COUNTY and/or CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

**PART FOUR (4): CONTRACT PROVISIONS**

- A. The COUNTY and/or CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the COUNTY and/or CITY to proceed.
- B. Associated Construction cost will be an eligible cost as part of this Agreement.  
 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 and CITY 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 and CITY 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 or CITY, the COUNTY or CITY 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 and CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this Agreement. The COUNTY and CITY 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 and CITY will provide all bids to the STATE with a recommendation for award. The COUNTY and CITY shall not award the contract until it has received written approval from the STATE.  
 For projects with approval by the STATE to use COUNTY and/or CITY Forces, the Construction for the project will be performed by the COUNTY and/or CITY at actual costs for labor, materials, and equipment, as approved by the STATE.  
 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 STATE 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. The STATE will be the permittee of record with ADEM for the permit. The STATE and the contractor will be responsible for compliance with the permit.  
 The STATE will secure all permits and licenses of every nature and description applicable to the project in any manner; conform to and comply with the requirements of any such permit or license; and comply 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 STATE 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 by the COUNTY under this Agreement and, as provided in Ala. Code § 11-93-2 (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 (1975), 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

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by the COUNTY 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. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.
- G. The COUNTY and/or CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.
- H. Upon completion and acceptance of this project by the State, the COUNTY and CITY will assume full ownership and responsibility for the portion of the project work on their respective right-of-way and the STATE will assume full ownership and responsibility and maintain the project work on STATE right-of-way in accordance with applicable State law.

**PART FIVE (5): ACCOUNTING PROVISIONS**

- A. The COUNTY and CITY 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 and CITY 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, and 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 of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- B. The COUNTY and CITY 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 and CITY 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.

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The COUNTY and CITY will report to the STATE the progress of the project in such manner as the STATE may require. The COUNTY and CITY will also provide the STATE any information requested by the STATE regarding the project. The COUNTY and CITY 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 and CITY 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 and any and all data and records which in any way relate to the project or to the accomplishment of the project. The COUNTY and CITY 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 and CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The COUNTY and CITY 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.

- D. The COUNTY and CITY 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 the 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 and CITY, for any audit performed on this project in accordance with Act No. 94-414.

**PART SIX (6): MISCELLANEOUS PROVISIONS**

- A. By entering into this Agreement, the COUNTY and CITY 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 constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, 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 be enacted during the term of this Agreement, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing this Agreement, 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.
- D. No member, officer, or employee of the COUNTY and CITY, 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:

City of Alabaster, Alabama

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

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

\_\_\_\_\_  
Type Name of Clerk  
(AFFIX SEAL)

\_\_\_\_\_  
Type Name of Mayor