

MEMORANDUM OF AGREEMENT AMONGST MADISON COUNTY, ALABAMA,
THE CITY OF MADISON, ALABAMA AND THE CITY OF HUNTSVILLE,
ALABAMA FOR SLAUGHTER ROAD IMPROVEMENTS

MADISON COUNTY, ALABAMA (the “County”), the CITY OF MADISON, ALABAMA (“City of Madison”) and the CITY OF HUNTSVILLE, ALABAMA (“Huntsville”), enter into this Agreement on the ___ day of _____, 2024 (collectively referred to as either “the Parties” or individually as a “Party”).

WHEREAS, Section 11-102-1 *et seq.*, Code of Alabama (1975) authorizes counties and/or incorporated municipalities of the State of Alabama to enter into written contracts for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties, and further provides that joint contract(s) may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities; and

WHEREAS, pursuant to Section 11-102-1 *et seq.*, Code of Alabama (1975), the County, the City of Madison and Huntsville, desire to enter into this Agreement to act cooperatively for the public purpose of making certain improvements to Slaughter Road to include shared costs of engineering, design, construction, procurement of right of ways and making other improvements to the intersections of Slaughter Road and Eastview Drive and Castle Drive (“the Project”); and

WHEREAS, the Project lies within the jurisdictions of the County, the City of Madison and Huntsville; and

WHEREAS, as of the date of this Agreement, the County has incurred three hundred nineteen thousand eight hundred dollars (\$319,800) in design and engineering costs for the Project with CDG Engineers & Associates, Inc. (“CDG”); and

WHEREAS, CDG has represented to the Parties that the construction costs, including CE&I services, of the Project are estimated to be four million five hundred sixty four thousand two hundred forty two and 19/100 dollars (\$4,564,242.19); and

WHEREAS, the Project shall require the Parties to procure certain right of ways and/or easements necessary for the construction of the Project; and

WHEREAS, the Parties find that it is in the public interest that the Parties enter into this agreement to coordinate responsibilities and share costs to efficiently complete the Project.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES stated herein the County, the City of Madison and Huntsville mutually agree as follows:

- I. SCOPE OF WORK: the County will complete the design phase for improvement of the Project within one (1) year from the effective date of this Agreement. The County will coordinate and direct design, right of way acquisition, utility relocation and construction of improvements for the Project.

- II. DESIGN APPROVAL: At sixty percent (60%) completion, the County will submit the designs to both the City of Madison and Huntsville for their input and approval. The City of Madison and Huntsville shall provide written consent on the design to the County within sixty (60) days after receipt of the design, and if no comment is received, the design will be deemed approved. The County will provide the cities with an electronic copy of the completed plans.
- III. CITY OF MADISON AND HUNTSVILLE FINANCIAL CONTRIBUTIONS: The City of Madison and the City of Huntsville shall each contribute a maximum of \$1,500,000.00 to this Project (total of \$3,000,000.00) as provided herein. Nothing herein shall preclude any additional contribution of funds toward the Project if either the City of Madison and the City of Huntsville have available funding and deem additional funding to be in the best interest of the citizens of each jurisdiction.
- IV. BIDDING: The Parties agree to the following:
- a. The County will be the awarding authority for the Project, advertise all bids, and perform all necessary actions to complete an open competitive bid for the construction of the Project.
 - b. The County will advertise for sealed bids for all work and materials necessary for said construction in accordance with Alabama Bid Laws within three (3) months of the completion of the design plans, right of way acquisitions and relocation of utilities.
 - c. The County will determine the lowest responsible and responsive bidder and enter into a separate agreement with the contractor for the construction of the Project unless the County in consultation with the City of Madison and Huntsville determines that all bids are unreasonable or that it is not in the interest of the County to accept any of the bids. Prior to entering into the Agreement for the construction of the Project, the County shall confirm with the City of Madison and Huntsville available funding and agreement to reimburse based on the determination of the lowest responsible and responsive bidder. Failure of the City of Madison or Huntsville to provide written objection to proceeding with construction of the Project within seven (7) calendar days of receipt of notice of proposed award from the County shall be deemed approval to proceed.
 - d. Each Party's share of expenditures under this Agreement shall be appropriated and paid in the manner set forth in this Agreement and in the same manner as for other expenses of the entity.
 - e. All advertising costs incurred by the County on behalf of the joint purchasing Agreement shall be paid by the County.
- V. TERM: The duration of this Agreement shall not exceed three (3) years from the date of its final execution or end of the Project, whichever first occurs.

- VI. **IMPLEMENTATION:** The Parties agree as follows:
- a. The County will assume responsibility for the management of the Project.
 - b. The County will provide construction, engineering, and inspection services during the construction phase of the Project. The City of Madison and Huntsville will be given notice and an opportunity for input during the inspection of the portions of the Project within the corporate limits of said cities.
 - c. The Parties expressly agree that (i) the County does not assume any risk or future liability, or any future responsibility for any portion of the Project located within the corporate limits of either the City of Madison or Huntsville and (ii) the City of Madison and Huntsville do not assume any risk or future liability, or any future responsibility for any portion of the Project located within the County but outside the corporate limits said cities.
 - d. Except as expressly provided in this Agreement, neither Party shall have any other power to incur any debt which shall become the responsibility of the other Party.
 - e. Except as specifically provided in this Agreement, the execution of this Agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the Parties the relationship of principal or agent or of partnership or of joint venture.
 - f. Except as otherwise provided by law and as limited by this Agreement, any entity which contracts to perform or exercise any service or power pursuant to this Agreement shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purpose of this Agreement.
 - g. Each Party to this Agreement shall take all actions necessary to effectuate its respective contractual duties and responsibilities under this Agreement.
- VII. **ACCESS:** The City of Madison and Huntsville grant the County full access to their respective rights-of-way and easements necessary for the completion of the Project during the period such remains under construction.
- VIII. **REIMBURSEMENT OF DESIGN AND CONSTRUCTION COSTS:** The County shall invoice the City of Madison and Huntsville for their respective share of the design and construction costs based on invoices received from the design professional(s) and pay estimates periodically received from the Contractor. The City of Madison and Huntsville shall each be responsible to the County for one-third of the costs of design, construction and CE&I up to the maximum contribution of \$1,500,000.00 from the City of Madison and \$1,500,000.00 from the City of Huntsville. The Parties agree that the City of Madison and Huntsville shall issue payment within thirty (30) days of receipt of invoice from the County.

- IX. **RIGHT OF WAY ACQUISITION:** The County shall commence the acquisition of rights-of-ways and/or easements necessary for the completion of the Project. The City of Madison and Huntsville each give express permission to the County to acquire land acquisitions through donation, negotiation, condemnation and/or other course of action required during the Project. Each party shall take title to rights-of-way and easements located within their respective jurisdictions at the completion of the Project. Subject to the maximum contribution of \$1,500,000.00 from the City of Madison and \$1,500,000.00 from the City of Huntsville, the City of Madison and Huntsville shall each respectively be responsible to the County for one-third of the costs of such acquisition. The County will provide the City of Madison and Huntsville the appraisals for property to be acquired. The County shall confirm with the City of Madison and Huntsville available funding and agreement to reimburse based on the appraised value of the property to be acquired. Failure of the City of Madison or Huntsville to provide written objection to proceeding with right of way acquisitions within seven (7) calendar days of receipt of the appraisals from the County shall be deemed approval to proceed. The Parties shall reimburse the County for such acquisition costs within thirty (30) days' notice of the amounts due to the County.
- X. **REIMBURSEMENT OF OTHER COSTS:** Subject to the maximum contribution of \$1,500,000.00 from the City of Madison and \$1,500,000.00 from the City of Huntsville, the Parties also acknowledge that the City of Madison and Huntsville shall each reimburse the County one-third of any additional costs necessary for the Project, including but not limited to, survey costs, environmental studies, and relocation of utilities. The Parties agree that the City of Madison and Huntsville shall issue reimbursement to the County for such other costs within sixty (60) days of presentation to the cities for reimbursement.
- XI. **TERMINATION:** The Parties agree as follows:
- a. Any Party hereto may terminate this Agreement prior to commencement of work by giving thirty (30) days' notice of the intention to do so to the other Party. Such notice shall be sent to the respective designees of the Parties identified herein under Section XVIII of this Agreement.
 - b. The City of Madison or Huntsville may terminate this Agreement by providing written objection as specified in Sections IV.C. or IX.
 - c. The termination of this Agreement does not absolve the terminating Party from performing its obligations under this Agreement arising prior to the effective date of such termination.
- XII. **SEVERABILITY:** If any provision of this Agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- XIII. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama courts.

- XIV. DISPOSITION OF FUNDS UPON TERMINATION OF AGREEMENT: Any jointly contributed funds remaining upon the termination of this Agreement will be distributed to the Parties *pro rata* based on the percentage of the overall funding contributed by each Party.
- XV. LIABILITY RELATED TO ORDINANCES, POLICIES, RULES AND REGULATIONS: In executing this Agreement, none of the Parties hereto assumes liability or responsibility for or in any way releases the other Party from any liability or responsibility which arises in whole or in part from the existence or effect of their respective ordinances, policies, rules, or regulations. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such ordinance, policy, rule or regulation is at issue, the Party responsible for such ordinance, policy, rule or regulation shall defend the same at its sole expense.
- XVI. MUTUAL BENEFIT: All Parties acknowledge that the undertakings described herein are for their mutual benefit.
- XVII. NO SEPARATE ENTITY: The Parties do not intend to create any separate legal or administrative entity with respect to this Agreement or the services to be provided hereunder.
- XVIII. INSURANCE: The County agrees to require any contractors it retains pursuant to this Agreement to include the City of Madison and Huntsville to be named as an additional insured with respect to the contractor's required insurance and to indemnify to all Parties pursuant to this Agreement.
- XIX. IMMIGRATION ACT COMPLIANCE:
- a. Each Party represents and warrants that it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Beason-Hammon Act"), and that, during the performance of this Agreement, such Party shall participate in the E-Verify program as required under the terms of the Beason-Hammon Act.
 - b. 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.
 - c. Furthermore, a contracting Party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.
- XX. NOTICE: Any notice required or permitted by this Agreement shall be personally

delivered in writing or deposited with the U.S. Postal Service, postage prepaid, certified, and returned receipt requested, and addressed as follows:

To the County:

County Attorney
Madison County
100 Northside Square
Huntsville, AL 35801

To the City of Madison:

City Attorney
City of Madison
100 Hughes Road
Madison, Alabama 35758

To the City of Huntsville:

City Attorney
City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

- XXI. **BOYCOTTING ACTIVITIES:** By signing this Agreement, each Party represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.
- XXII. **NON-ASSIGNABILITY:** None of the Parties shall delegate or assign any of its obligations or assign its benefits under this Agreement.
- XXIII. **AUTHORITY TO CONTRACT:** Each Party declares that it has obtained all necessary approvals of its governing authority to execute and bind the Parties.
- XXIV. **NO THIRD-PARTY RIGHTS:** This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
- XXV. **FORCE MAJEURE:** None of the Parties shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of its respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond its respective reasonable control; (b) any act of God; (c) earthquake, fire, explosion, flood or other natural disaster; (d) strike or labor dispute; or (e) any war, act of terrorism, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion.
- XXVI. **NON-WAIVER:** Any Party's failure to seek redress for a violation or to insist upon strict performance of any Agreement provision will not prevent a subsequent act, which would originally have constituted a violation, from having the effect of an original

violation. No waiver of a provision, breach or default shall apply to any other provision or subsequent breach or default or be deemed continuous.

XXVII. LIMITATION OF LIABILITY: The Parties agree to indemnify and hold harmless each other, their appointed and elected officers, employees, agents and/or other representatives against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work on the Project.

XXVIII. NO WAIVER OF THE SOVEREIGN IMMUNITY: Nothing contained in this Agreement constitutes a waiver of the sovereign, discretionary, qualified and/or any other immunity available to any of the Parties under applicable law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS whereof, the parties have executed the Agreement effective as of the day and year first above written.

MADISON COUNTY, ALABAMA

Mac McCutcheon, Chairman
Madison County Commission

ATTEST:

Kevin Jones, County Administrator

IN WITNESS whereof, the parties have executed the Agreement effective as of the day and year first above written.

CITY OF MADISON, ALABAMA

Paul Finley, Mayor

ATTEST:

Lisa D. Thomas, City Clerk-Treasurer

IN WITNESS whereof, the parties have executed the Agreement effective as of the day and year first above written.

CITY OF HUNTSVILLE, ALABAMA

Tommy Battle, Mayor

ATTEST:

Shaundrika Edwards, City Clerk