

**AGREEMENT
FOR
PRELIMINARY ENGINEERING

BETWEEN THE STATE OF ALABAMA
AND
THE COUNTY OF BALDWIN, ALABAMA**

**Project ST-002-888-008
Project Reference Number 100068565
No Name Road Improvements
in Baldwin County**

THIS AGREEMENT is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation, hereinafter referred to as STATE; and the Baldwin County, Alabama, hereinafter referred to as COUNTY; and

WHEREAS, the STATE and COUNTY desires to make improvements to No Name Road along State Route 180 in the county jurisdiction; and

WHEREAS, the STATE will perform the preliminary engineering necessary; and

WHEREAS, the STATE and COUNTY desire to mutually cooperate in the construction improvements on No Name Road;

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

- (1) The COUNTY will perform or have performed all services required to fulfill the purposes of this Agreement. Plans will be prepared by the STATE not as a part of Project cost.
- (2) The STATE agrees to purchase all materials and cover labor costs related to the construction of the roadway improvements, with the COUNTY providing all equipment for installation of said improvements, to include the needed soil stabilization.

- (3) This project will be administered by the COUNTY. The estimated costs and participation by the various parties are as follows:

	<u>Total Estimated Cost</u>	<u>Total State Funds</u>	<u>Total County Funds</u>
Construction, including CE&I	<u>\$200,000.00</u>	<u>\$120,000.00</u>	<u>\$80,000.00</u>
TOTAL	\$200,000.00	\$120,000.00	\$80,000.00

It is understood that the above is an estimate only, and in the event the final costs exceed the estimate, the STATE will be responsible for applicable costs not to exceed the above amount, with the COUNTY covering any overruns.

- (4) The performance of the work covered by this Agreement will be in accordance with the current regulations and requirements of the STATE.
- (5) The COUNTY will maintain the roadway and appurtenances upon completion by Memorandum of Understanding with Alabama Historical Commission.
- (6) The STATE will provide without cost to the COUNTY information available from its records that will facilitate the performance of the work.
- (7) It is clearly understood by both parties that the STATE does not commit any STATE funds beyond those mentioned herein.
- (8) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties herein.
- (9) All services of the STATE necessary to carry out the intent of this Agreement will be paid as provided for herein.
- (10) The COUNTY will invoice the STATE for applicable costs to the project not more

frequently than monthly. Requests for reimbursements will be made on forms provided by the STATE and submitted through the Region for payment.

- (11) Invoices for any phase of work performed by the COUNTY 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.
- (12) 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 1994, No. 94-414.
- (13) The COUNTY shall be responsible at all times for all of the work performed 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 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,

- (14) 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.
- (15) By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
- (16) This Agreement will remain in effect, unless otherwise terminated by either party upon the delivery of a thirty (30) day notice of termination.
- (17) Nothing will be construed under the terms of this Agreement by the STATE or the COUNTY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th Law).
- (18) Exhibits M and N are attached and hereby made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause this Agreement to be executed by those offices, officials, and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

COUNTY OF BALDWIN, ALABAMA

County Administrator

BY: _____
Commission Chair

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED
AND APPROVED AS TO FORM AND CONTENT:

BY: _____
Chief Counsel, William F. Patty

RECOMMENDED FOR APPROVAL:

Southwest Region Engineer, Vincent E. Calametti, P. E.

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

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

Transportation Director, John R. Cooper

The foregoing Agreement is hereby approved by the Governor of the State of Alabama
this ____ day of _____, 20 ____.

GOVERNOR OF ALABAMA, KAY IVEY

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

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

The CONSULTANT 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.