

TUSCALOOSA COUNTY COMMISSION
MEETING
SEPTEMBER 18, 2019

TUSCALOOSA COUNTY §
STATE OF ALABAMA §

This being the date and hour to which the Tuscaloosa County Commission adjourned, the County Commission met pursuant to such adjournment with Probate Judge Rob Robertson presiding as Chairman. The following members were present:

Stan Acker
Jerry Tingle
Mark C. Nelson
Reginald Murray

Commissioner Stan Acker moved, seconded by Commissioner Mark C. Nelson, the County Commission voted unanimously to approve the minutes of September 4, 2019.

Commissioner Jerry Tingle moved, seconded by Commissioner Stan Acker, the County Commission voted unanimously to acknowledge supernumerary retirement status for retiring Tax Assessor Doster McMullen at the maximum rate of compensation allowed by law.

Commissioner Stan Acker moved, seconded by Commissioner Mark C. Nelson, the County Commission voted unanimously to authorize the Engineering Department to establish and post a 25 mph speed limit on Spain Drive, District I.

Planning Director Farrington Snipes presented the Commission details regarding the Holt Sanitary Sewer Extension Project. After discussion, Commissioner Jerry Tingle's motion to approve the project was seconded by Commissioner Reginald Murray. The motion failed on a three-to-two vote with Commissioner Stan Acker and Commissioner Mark C. Nelson casting the NAY votes.

Commissioner Reginald Murray moved, seconded by Commissioner Jerry Tingle, the County Commission voted unanimously to approve the revised construction agreement, Transportation Alternatives Program Project number: TAPAAF-TA15(942), between the Commission and the State of Alabama for the US Highway 11 Sidewalk Project.

Exhibit 9-1, Pages

Commissioner Mark C. Nelson moved, seconded by Commissioner Reginald Murray, the County Commission voted unanimously to approve the warrants issued to cover Tuscaloosa County's expenditures for August 2019.

Exhibit 9-2, Page

Commissioner Stan Acker moved, seconded by Commissioner Mark C. Nelson, the County Commission voted unanimously to approve the County bank depositories list as present by Chief Financial Officer Bill Lamb.

Exhibit 9-3, Page

Commissioner Jerry Tingle moved, seconded by Commissioner Stan Acker, the County Commission voted unanimously to adopt the 2019-2020 fiscal year budget as presented by Chief Financial Officer Bill Lamb.

Exhibit 9-4, Page

Commissioner Jerry Tingle moved, seconded by Commissioner Mark C. Nelson, the County Commission voted unanimously to approve a subdivision regulation waiver request for Burchfield Spur.


Exhibit 9-5, Page

Commissioner Mark C. Nelson moved, seconded by Commissioner Stan Acker, the County Commission voted unanimously to approve a funding request in the amount of \$14,278.00 from the District III discretionary fund to the Tuscaloosa County Board of Education for an electronic sign at Maxwell Elementary.


Commissioner Reginald Murray moved, seconded by Commissioner Stan Acker, the County Commission voted unanimously to depart from the order of business set forth in the official agenda to consider going into executive session at the conclusion of the regular meeting.

Commissioner Reginald Murray moved, seconded by Commissioner Jerry Tingle, the County Commission voted unanimously to go into executive session at the conclusion of the regular meeting to discuss a Solid Waste Department personnel matter.

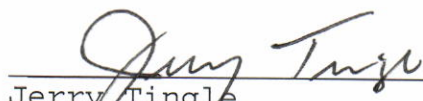
There being no further business to come before the Tuscaloosa County Commission, the meeting adjourned to Wednesday, October 2, 2019.



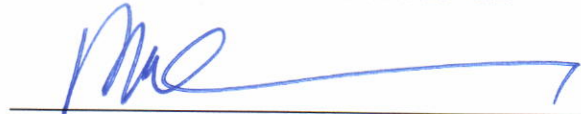
Rob Robertson
Judge of Probate
Chairman Tuscaloosa County Commission



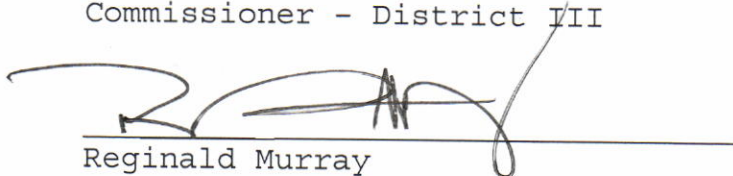
Stan Acker
Commissioner - District I



Jerry Tingle
Commissioner - District II



Mark C. Nelson
Commissioner - District III



Reginald Murray
Commissioner - District IV



Kay Ivey
Governor

ALABAMA DEPARTMENT OF TRANSPORTATION

WEST CENTRAL REGION
2715 Skyland Boulevard, East
Tuscaloosa, Alabama 35405
Telephone: 205-553-7030
Fax: 205-556-0900



John R. Cooper
Transportation Director

October 2, 2019

The Honorable Ward D. "Rob" Robertson, III
Probate Judge, Tuscaloosa County Commission
714 Greensboro Avenue
Tuscaloosa, AL 35401

Attention: Mr. Farrington B. Snipes, Jr., Director
Department of Planning, Economic & Community Development

RE: FULLY EXECUTED REVISED FUNDING AGREEMENT & RESOLUTION

Project TAPAAF-TA15(942)
CPMS No.: 100064557
U.S. Highway 11 Sidewalk Project
The Tuscaloosa County Commission
Tuscaloosa County

Dear Judge Robertson:

Please find the attached for your records the **Fully Executed Revised Funding Agreement and Resolution** between the State of Alabama and the Tuscaloosa County Commission, for the above referenced project. The **Revised Funding Agreement** is as shown below.

80% Federal Funds	\$625,215.44
20% Local Funds	<u>\$156,303.86</u>
Total Funds	\$781,519.30

If you have any questions, please contact Mr. Robert P. Hoggle, P.L.S. at (205)507-4440.

Sincerely,

James D. Brown, P.E.
West Central Region Engineer

Adriana L. Dunn
Adriana L. Dunn, P.E.
County Transportation Engineer
West Central Region

JDB/DAK/ALD/RPH

Attachments

Cc. File, FHWA, Local Transportation Bureau

EX 9-1

19-02386

**REVISED
CONSTRUCTION
AGREEMENT
FOR A
TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND THE
TUSCALOOSA COUNTY COMMISSION**

Sidewalk Project on SR-7

Project No. TAPAAF-TA15(942)

CPMS Ref# 100064557

PART ONE (1): INTRODUCTION

This Revised 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 Tuscaloosa County Commission, Alabama, hereinafter referred to as the COUNTY.

WHEREAS, the STATE and the COUNTY desire to cooperate in the sidewalk project on SR-7 from Westlee Drive to 21st Street; Project# TAPAAF-TA15(942); CPMS Ref# 100064557.

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. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent COUNTY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the COUNTY from COUNTY 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 80% of eligible costs, whichever is less.

EX 9-1

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

FUNDING SOURCE	ESTIMATED COSTS
Federal TAP Funds	\$ 625,215.44
County Funds	\$ 156,303.86

TOTAL (Incl CE&I)	\$ 781,519.30

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.

Any cost incurred by the COUNTY relating to this project which is determined to be ineligible for reimbursement by the 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

EX 9-1

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 STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not 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 15%, 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.

EX 9-1

PART FOUR (4): 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.

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 § 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,

EX 9-1

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 (5): 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.
- 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 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.
- 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

EX 9-1

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 (6): 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 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, 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 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.
- I. This Agreement supersedes the Agreement dated October 15, 2015, and that Agreement dated October 15, 2015, is hereby deemed to be null and void.

EX97

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

By: Melvin L. Vines
County Clerk (Signature)

Melvin L. Vines
Type Name of Clerk
(AFFIX SEAL)

Tuscaloosa County, Alabama
By: Ward D. "Rob" Robertson, III
As Chairman (Signature)

Ward D. "Rob" Robertson, III
Type Name of Chairman

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

By: William F. Patty
William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

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

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

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

John R. Cooper
John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS 26 DAY OF September, 2019.

Kay Ivey
KAY IVEY
GOVERNOR, STATE OF ALABAMA

0297

RESOLUTION NUMBER _____

BE IT RESOLVED, by the Tuscaloosa 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:

Sidewalk project on SR-7 from Westlee Drive to 21st Street; Project# TAPAAF-TA15(942); CPMS Ref# 100064557.

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 Tuscaloosa 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 18th day of September, 20 19, and that such resolution is on file in the County Clerk's Office.

ATTESTED:

M. R. O'Neal
County Clerk

[Signature]
Chairman

18th day of September, 20 19, 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 18th day of September, 20 19.

M. R. O'Neal
County Clerk

(AFFIX SEAL)

EX 9-1

STD CONTRACT EXHIBITS

REV. 9/19/16

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.

EX-1

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.

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.