



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

---

**Meeting Type:** City Council Regular Meeting **Meeting Date:** 10/27/2022

**File ID:** TMP-2169

---

**Department:** Engineering

**Subject:**

**Type of Action:** Approval/Action

Agreement between the City of Huntsville and the State of Alabama Department of Transportation for The Accommodation of Utility Facilities on Public Right-of-Way for Governors Drive Median Landscaping & Pedestrian Improvements (Mill Creek Action Activity).

Resolution No.

**Finance Information:**

**Account Number:** N/A

**City Cost Amount:** N/A

**Total Cost:** N/A

**Special Circumstances:**

**Grant Funded:** N/A

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location:** N/A

**Address:**

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

**Additional Comments:**

Landscaping and pedestrian improvements within the medians of Governors Drive from Memorial Parkway west to Clinton Avenue.

## RESOLUTION NO. 22-

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement between the City of Huntsville and the State of Alabama Department of Transportation for The Accommodation of Utility Facilities on Public Right-of-Way for Governors Drive Median Landscaping & Pedestrian Improvements (Mill Creek Action Activity), in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement between the City of Huntsville and the State of Alabama Department of Transportation for The Accommodation of Utility Facilities on Public Right-of-Way for Governors Drive Median Landscaping & Pedestrian Improvements (Mill Creek Action Activity)." consisting of a total of five (5) pages and the date of October 27, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 27<sup>th</sup> day of October, 2022.

---

President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 27<sup>th</sup> day of October, 2022.

---

Mayor of the City of Huntsville, Alabama

**ALABAMA DEPARTMENT OF TRANSPORTATION  
PERMIT AGREEMENT FOR THE ACCOMMODATION OF UTILITY  
FACILITIES ON PUBLIC RIGHT-OF-WAY**

County MadisonRoute Number SR 53Milepost 316.891 - 317.714

**FOR OFFICIAL USE ONLY**

DATE RECEIVED FROM APPLICANT: \_\_\_/\_\_\_/\_\_\_

**PERMIT NUMBER:** \_\_\_\_\_

Bonding Agency N/A Bond Number 8572667

Associated Permits and/or Documents Construction Plans, MB-05, MB-06A

THIS AGREEMENT is entered into this the 27 day of October, 2022, by and between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as ALDOT and City of Huntsville, a Utility hereinafter referred to as the APPLICANT.

WITNESSETH

WHEREAS, the APPLICANT desires to have its facilities accommodated on public highway right-of-way in Madison County, Alabama consisting approximately of the following:

(11) 2"HDPE directional bored casing pipes with 1" water service line bored at a minimum 36" below the road-way. All bores will begin outside of the northern limits of the ALDOT right-of-way and serve the irrigation needs for the landscaped medians. The utility crossings are shown on enclosed sketches.

\_\_\_\_\_; and

WHEREAS, ALDOT hereby grants to the APPLICANT approval to cross or locate its facilities on the public right-of-way at the location and in the manner hereinafter set forth:

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The APPLICANT will install its facilities on public right-of-way in accordance with plans and specifications of the APPLICANT as approved by ALDOT which plans and specifications are hereby made a part of this permit by reference.
2. In the installation of facilities and performing work under this agreement, the APPLICANT will conform to the provisions of the latest edition of the Alabama Department of Transportation Utility Manual, which manual is of record in ALDOT and is hereby made a part of this permit by reference.
3. The national Manual on Uniform Traffic Control Devices, ALDOT approved edition, is hereby made a part of this permit by reference and will be conformed to as the provisions thereof are applicable to such work. Such Manual is of record in ALDOT at the execution of this Agreement.
4. The Federal Water Pollution Control Act, The Federal Insecticide, Fungicide, and Rodenticide Act, The Alabama Water Pollution Control Act, The Alabama Environmental Management Act, The Clean Water Act (1987), and the Alabama Nonpoint Source Management Program (1989) are hereby made a part of this permit by reference.

President of the City Council of the City  
of Huntsville, AL  
Date: October 27, 2022

5. The APPLICANT will conform to the regulations of the Environmental Protection Agency (EPA) and of the Alabama Department of Environmental Management (ADEM), latest edition, for both installation and maintenance of such facilities.

The APPLICANT will provide proof of applicable permit coverage and conform to the above referenced regulations for both the facility installation and maintenance of permitted facilities and areas of rights-of-way. The APPLICANT must provide a copy of the Notice of Intent (NOI) issued by ADEM. This will assure compliance with Phase II of storm-water construction requirements. In the event a NOI is not required, APPLICANT must submit to ALDOT a Best Management Practices (BMP) plan to control sediment run-off.

6. In the event that ALDOT is issued a citation or any other enforcement document by ADEM/EPA for failure to comply with applicable requirements, it shall be the responsibility of the APPLICANT to bring all BMPs into compliance and to pay for any fines, assessments, etc. that may be issued to ALDOT by ADEM/EPA.

7. Underground Damage Prevention Legislation, Alabama Act 94-487, is hereby made a part of this permit by reference. The APPLICANT will conform to the above referenced regulations for both the facility installation and maintenance of permitted facilities and areas of rights-of-way. Should the permitted work require a locate request ticket, no work shall begin until a copy of such ticket is obtained and the APPLICANT shall keep a copy of such ticket at the site of work.

8. If hazardous materials, wastes, substances, or as otherwise defined by Code of Alabama § 6-5-332.1(a)(2) (1993 Repl. Vol.) are encountered in the execution of this Agreement it will be the responsibility of the APPLICANT to notify the proper agency responsible for said hazardous materials and to comply with any and all environmental regulations as established by the Environmental Protection Agency (EPA), Alabama Department of Environmental Management (ADEM), and of the Occupational Safety and Health Administration (OSHA) in the proper disposition of the hazardous materials encountered.

9. This permit is valid for the contract period which is defined as follows: All proposed work as described and submitted in the permit documents must be completed within one year from the approved date of the permit and for a period covering one year from ALDOT acceptance of proposed work.

10. The APPLICANT will perform or cause to be performed the work applied for in this permit contract and will restore the highway in the work area in as good condition as the same was prior to the work and will maintain the accomplished work and highway work area in a condition satisfactory to ALDOT. Should the APPLICANT not maintain the work or create an unsafe condition during the contract period, ALDOT reserves the right to remove any work and restore the ROW to a safe condition at the expense of the APPLICANT and the APPLICANT agrees to pay ALDOT all such costs as a result.

11. Once work is begun, the APPLICANT shall pursue the work continuously and diligently until completion. Should the APPLICANT feel that the work cannot be completed in a one year period, they shall submit in writing (30 days prior to the termination date) to ALDOT the reasons for an extension of time. ALDOT will determine whether an extension may be approved.

12. For Small Wireless Facility applications, the APPLICANT hereby enters into the following permit tolling agreement with ALDOT upon its execution of this Agreement:

Any written request from ALDOT for revision, addition, or clarification related to a complete application shall toll the processing deadline of said permit until the APPLICANT provides written response properly addressing ALDOT's request. Failure by the APPLICANT to address the request(s) within thirty (30) days will result in the denial of the application.

13. The APPLICANT will file with ALDOT an acceptable certified check or bond in the penal amount of \$ N/A (Bond Number: 8572667) to guarantee the faithful performance of this permit contract in its entirety during the contract period as defined in Item 9. Upon satisfactory completion and acceptance of all work provided for in this permit contract, the check or bond, as applicable, will be returned to the APPLICANT; otherwise, the proceeds from the check, or any amount received by ALDOT as a result of the bond, will be applied to complete and fulfill the permit contract terms. In the instance that ALDOT determines a bond on record is necessary, the APPLICANT shall provide such bond to ALDOT. The bond amount shall be determined by ALDOT.

14. Indemnification Provisions. Please check the appropriate type of applicant:

By entering into this agreement, the APPLICANT is not an agent of the State, its officers, employees, agents or assigns. The APPLICANT is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.



If the applicant is an incorporated municipality or gas district then:

Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the APPLICANT shall defend, indemnify, and hold harmless the State of Alabama, ALDOT, its officers, officials, agents, servants, and employees, in both their official and individual capacities, 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 APPLICANT, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the APPLICANT 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 APPLICANT its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the APPLICANT, its agents, servants, representatives or employees, or anyone for whose acts the APPLICANT may be liable.



If the applicant is county government then:

The APPLICANT 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 APPLICANT shall protect, defend, indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officials, officers, servants, and employees, in both their official and individual capacities, and their agents and/or assigns.

For all claims not subject to Ala. Code § 11-93-2 (1975), the APPLICANT shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, servants, and employees, in both their official and individual capacities, and their agents and/or assigns from and against any and all action, 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 APPLICANT pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the APPLICANT, its agents, servants, representatives, employees or assigns.

\_\_\_\_\_ If the applicant is a state governmental agency or institution then:

The APPLICANT shall be responsible for damage to life and property due to activities of the APPLICANT of employees of APPLICANT in connection with the work or services under this Agreement. The APPLICANT agrees that its contractors, subcontractors, agents, servants, vendors or employees of APPLICANT shall possess the experience, knowledge and skill necessary to perform the particular duties required or necessary under this Agreement. The APPLICANT is a state institution and is limited by the Alabama Constitution in its ability to indemnify and hold harmless another entity. The APPLICANT maintains self-insurance coverage applicable to the negligent acts and omissions of its officers and employees, which occur within the scope of their employment by the APPLICANT. The APPLICANT has no insurance coverage applicable to third-party acts, omissions or claims, and can undertake no obligation that might create a debt on the State Treasury. The APPLICANT agrees ALDOT shall not be responsible for the willful, deliberate, wanton or negligent acts of the APPLICANT, or its officials, employees, agents, servants, vendors, contractors or subcontractors. The APPLICANT shall require, its contractors and its subcontractors, agents, servants or vendors, as a term of its contract with the APPLICANT, to include ALDOT as an additional insured in any insurance policy providing coverage for the work to be performed pursuant to and under this Agreement and to provide the APPLICANT a copy of the insurance policy declaration sheet confirming the addition of ALDOT thereto.

\_\_\_\_\_ If the applicant is not a county, incorporated municipality, or state governmental agency or institution then:

The APPLICANT will protect, defend, indemnify and hold harmless the State of Alabama, ALDOT, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all actions, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Permit, and/or the APPLICANT's failure to comply with all applicable laws or regulations.

15. The APPLICANT 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 APPLICANT, its agents, servants, employees or facilities.

16. ALDOT in executing this Agreement does not in any way assume the responsibility for the maintenance of the facilities of the APPLICANT, nor the responsibility for any damage to the facilities caused by third parties.

17. The APPLICANT will have a copy of this Agreement on the project site at all times while said work is being performed.

18. Nothing contained in this Permit Agreement, nor the issuance or receipt thereof, shall be construed to alter or affect the title of ALDOT to the public right-of-way nor to increase, decrease or modify in any way the rights of the APPLICANT provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

19. Reimbursement for future relocations of the APPLICANT'S facilities will be in accordance with State law in effect at the time such relocations are made.

20. The APPLICANT stipulates that the specific use of these facilities located upon public right-of-way is ground lighting, irrigation and landscaping. The APPLICANT further stipulates that should this specific use change at any time in the future that the APPLICANT will notify ALDOT immediately of the change.

This Agreement is deemed to be executed on the date hereinabove set forth by the parties hereto in their respective names by those persons and officials thereunto duly authorized. Witness our hands and seals, this the 27 day of October, 2022.

WITNESS:

\_\_\_\_\_

City of Huntsville  
Legal Name of Applicant

By: \_\_\_\_\_  
Authorized Signature and Title for Applicant

Tommy Battle, Mayor  
Typed or Printed Name of Signee

P.O. Box 308  
Address Line 1

Huntsville AL 35804  
Address Line 2

256 427 5300  
Telephone Number

kathy.martin@huntsvilleal.gov  
Contact Email Address

**FOR OFFICIAL USE ONLY**

**RECOMMENDED FOR APPROVAL:**

DISTRICT:	_____	_____	_____
	Printed Name	Signature	Date
AREA:	_____	_____	_____
	Printed Name	Signature	Date
REGION:	_____	_____	_____
	Printed Name	Signature	Date

**APPROVED:**  
**ALABAMA DEPARTMENT OF TRANSPORTATION**  
**ACTING BY AND THROUGH ITS TRANSPORTATION**  
**DIRECTOR**

(PLEASE CHECK APPROPRIATE BOX)

- ☐ CENTRAL OFFICE
- ☐ REGION
- ☐ AREA
- ☐ DISTRICT

By: \_\_\_\_\_

Printed Name	Signature	Date
--------------	-----------	------