



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 10/10/2024

File ID: TMP-4711

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Funding Agreement between the City of Huntsville, Alabama and the Alabama Department of Commerce for Flood Mitigation, Project No. 71-25-SP01.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: \$5,000,000.00

Total Cost: \$5,000,000.00

Special Circumstances:

Grant Funded: \$5,000,000.00

Grant Title - CFDA or granting Agency: Alabama Department of Commerce

Resolution #: N/A

Location: (list below)

Address: N/A

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

Additional Comments:

Funding Agreement between the City and the Alabama Department of Commerce for flood mitigation for a total of \$5,000,000.00 to be paid by the Alabama Department of Commerce.

RESOLUTION NO. 24-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a Funding Agreement between the City of Huntsville, Alabama and the Alabama Department of Commerce in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) for Flood Mitigation, Project No. 71-25-SP01, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said Funding Agreement is substantially in words and figures similar to that document attached hereto and identified as "Funding Agreement between the City of Huntsville, Alabama and the Alabama Department of Commerce for Flood Mitigation, Project No. 71-25-SP01," consisting of a total of six (6) pages, and the date of October 10, 2024, 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 10th day of October, 2024.

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

APPROVED this the 10th day of October, 2024.

Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA)
MONTGOMERY COUNTY)

FUNDING AGREEMENT

This Funding Agreement (this "Agreement") is entered into by and between the Alabama Department of Commerce ("Commerce") and the City of Huntsville (the "City").

1. **PURPOSE:** These funds are to be expended for flood mitigation by the City, with such purposes being referred to herein as the "Project."
2. **FUNDING AND COMPENSATION:** The total amount to be paid by Commerce under this Agreement shall be Five Million Dollars and No Cents (\$5,000,000.00) to be used pursuant to the Project. Payment will be made upon submission of a "payment request". Payment is subject to change if proration of the State General Fund is declared.

Commerce, at its discretion, may cancel any warrant issued to the City pursuant to this Agreement and not cashed by the City within forty-five days of the issue date of the warrant.

3. **FUNDING PERIOD:** This Agreement is effective as of **the date all parties have signed this Agreement** and will end on **September 30, 2025**.
4. **AMENDMENTS:** Commerce or the City may, from time to time, request amendment to various provisions of this Agreement. Such amendments, which are mutually agreed upon by Commerce and the City, must be incorporated as written amendments to this Agreement and approved by all signatory authorities prior to implementation.
5. **REPORTING:** Within 30 days after the final expenditure of funds, but not later than September 30, 2025, the City must provide Commerce a final report documenting full expenditures and funding accomplishments. Any unexpended funds must be remitted to Commerce with the final report.
6. **TERMINATION:** The following provisions apply to termination under this Agreement, whether termination by Commerce or by the City. The performance of work under this Agreement may be terminated in whole or in part for the following circumstances:

Termination for Convenience. This Agreement may be terminated by either party

President of the City Council of the City
of Huntsville, AL
Date: October 10, 2024

with thirty (30) days written notice. Said notice shall specify the reasons for requesting such termination. If Commerce determines that continuation of the work will serve no useful public purpose, this Agreement may be terminated by Commerce and the City shall be entitled to necessary expenses incurred through the date of termination or the date services are last provided, whichever occurs first.

Termination for Cause. If, through any cause, the City shall fail to fulfill in a timely manner its obligations under this Agreement, or if the City shall violate any of the covenants, agreements or stipulations of this Agreement, and such failure or violation is not corrected within fifteen (15) days after such notice is given by Commerce to the City, Commerce shall thereupon have the right to immediately terminate or suspend this Agreement by giving written notice to the City of such termination or suspension and specifying the effective date thereof.

In the event of termination, for either convenience or cause, all property, finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, computer tapes, computer programs, and reports prepared by the City under this Agreement shall, at the option of Commerce, and if in accordance with applicable State and Federal regulations, become the property of Commerce. The City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the City shall not be relieved of liability to Commerce for damages sustained by Commerce by virtue of any breach of this Agreement by the City and Commerce may withhold any payments to the City for the purpose of setoff until such time as the exact amount of damages due Commerce from the City is determined.

7. **DEBARMENT AND SUSPENSION:** The City is prohibited from using any contractor or subcontractor that has been debarred, suspended, or otherwise excluded from participation in federal assistance programs (Executive Orders 12549 and 12689).

The City shall require participants in lower tier covered transactions to include the certification on Government-wide Debarment and Suspension (Non-Procurement) for it and its principals in any proposal submitted in connection with such lower tier covered transactions (See Code of Federal Regulations, 2 CFR Part 180.300). The Excluded Parties List System is available for access from the System of Award Management website at <https://www.SAM.gov>.

The City certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed from debarment, declared ineligible, or voluntarily excluded from entering into this

Agreement by any federal agency or by any department, agency, or political subdivision of the State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Recipient.

The City certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The City shall immediately notify Commerce if any sub-contractor becomes debarred or suspended, and shall, at Commerce's request, take all steps required by Commerce to terminate its contractual relationship with the sub-contractor for work to be performed under this Agreement.

8. NOT TO CONSTITUTE A DEBT OF THE STATE: 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 Ala. Const. art. XI, § 213.
9. CONFLICTING PROVISION: 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 that conflicting provision in the Agreement shall be deemed null and void.
10. IMMUNITY AND DISPUTE RESOLUTION. The parties to this Agreement recognize and acknowledge that Commerce is an instrumentality of the State of Alabama, and as such, is immune from suit pursuant to Ala. Const. art. I, § 14. It is further acknowledged and agreed that none of the provisions and conditions of this Agreement shall be deemed to be or construed to be a waiver by Commerce of such Constitutional Immunity.

In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama.

For any and all other disputes arising under the terms of this Agreement which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.

11. DISCLAIMER: Commerce specifically denies liability for any claim arising out of

any act or omission by any person or agency receiving funds from Commerce whether by contract, grant, loan, or by any other means.

No recipient, including the City, contractor, or agency performing services under any agreement contract, grant or any other understanding oral or written, other than an actual employee of Commerce, shall be considered an agent or employee of the State of Alabama or Commerce or any division thereof. The State of Alabama, Commerce, and their agents and employees assume no liability to any recipient including the City, contractor or agency, or any third party, for any damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the acts or omissions of any recipient including the City, contractor or agency, or any other person.

12. ACCESS TO RECORDS: The Secretary of Commerce, the Comptroller General of the United States (if Federal funds), the Chief Examiner of Public Accounts, or any of their duly authorized representatives shall have the right of access to any pertinent books, documents, papers, and records of the City for the purpose of making audits, financial reviews, examinations, excerpts and transcripts. This right also includes timely and reasonable access to City personnel for the purpose of interview and discussion related to such agreement. This right of access is not limited to the required retention period but shall last as long as the records are retained.
13. ASSIGNABILITY: The City shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of Commerce thereto. Provided, however, that claims for money due, or to become due to the City from Commerce under this Agreement may be assigned to a bank, a trust company, or other financial institution through a valid court order and without such approval. Notice of such assignment or transfer shall be furnished promptly to Commerce.
14. CONTINGENCY CLAUSE: It is expressly understood and mutually agreed that any Commerce commitment of funds herein shall be contingent upon receipt and availability by Commerce of funds under the program for which this Funding Agreement is made. If this Agreement involves Federal funds, the amount of this Funding Agreement will be adjusted by the amount of any federal recessions and/or deferrals. Payments made by Commerce under the terms of this Agreement shall not constitute final approval of documents submitted by the City or of procedures used in formulating requests for payment to the City. Funds appropriated and obligated to this award are available for reimbursement of costs until the end of the performance period set forth in this Agreement.
15. CONFLICT OF INTEREST: A conflict of interest, real or apparent, will arise when any of the following has a financial or other interest in the firm or organization

selected for award: (1) the individual, (2) any member of the individual's immediate family, (3) the individual's partner, or (4) an organization which employs or is about to employ any of the above. The City certifies by signing this Agreement that no person under its employ or control who presently performs functions, duties, or responsibilities in connection with Commerce of grant-funded projects or programs has any personal and/or financial interest, direct or indirect, in this Agreement nor will the City hire any person having such conflicting interest. The City further certifies that it will maintain a written code of standards governing the performance of persons engaged in the award and administration of contracts and subgrants.

16. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: In addition to the provisions provided herein, the City shall be responsible for complying with any and all other applicable laws, ordinances, codes and regulations of the Federal, State and local governments, including, but not limited to, the Alabama Competitive Bid Law (§ 41-16-1 *et seq*, Code of Alabama 1975), the Alabama Public Works Law (§ 39-1-1 *et seq*, Code of Alabama 1975), any State permitting requirements, the Alabama Open Meetings Act (§ 36-25a-1 *et seq*, Code of Alabama 1975), and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (§ 31-13-1, *et seq*, Code of Alabama 1975).

For all contracts governed by the Alabama Public Works Law (§ 39-1-1 *et seq*, Code of Alabama 1975) or the Alabama Competitive Bid Law (§ 41-16-1 *et seq*, Code of Alabama 1975), the following shall apply: In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade. By signing this Agreement, the 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.

Pursuant to Code of Alabama § 31-13-9(k), for the duration of the Agreement, the City will not violate federal or state immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if City is found to be in violation of this provision, it shall be deemed in breach of the Agreement and City shall be responsible for all damages resulting therefrom.

Pursuant to Ala. Act No. 2023-409, City hereby certifies that it is not currently engaged in, and will not, during the term of the contract, engage in economic boycotts as the term "economic boycott" is defined in Section 1 of the Act.

In compliance with Ala. Act No. 2016-312, the City hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade.

17. NONDISCRIMINATION: The City shall be and is prohibited from discriminating based on race, color, religion, sex, age, handicap, or national origin.

IN WITNESS WHEREOF, Commerce and the City have executed this Funding Agreement as evidenced by their signatures below:

Commerce

City

Alabama Department of Commerce

City Of Huntsville

Ellen McNair, Secretary of Commerce
Print Name and Title

Print Name and Title

(Date)

(Date)

This contract/agreement has been reviewed for content, legal form, and complies with all applicable laws, rules and regulations of the State of Alabama governing these matters.

Hunter Talley
Attorney for Commerce