

**Alabama Department of Transportation
Federal Aid Rail/Highway Crossing Improvement
Project No. RHPD-RR21(920)
Agreement for Maintenance of Passive Warning Devices**

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 the "STATE" and the City of Huntsville, Alabama, hereinafter referred to as the "CITY".

WITNESSETH:

WHEREAS, Federal Section 130 funds will assist the STATE in Ninety percent (90%) of the expenses incurred in order to Install Signs, Delineators, Markings, and Legends for this project at DOT crossing number 731802T on Oakwood Ave. NE in Madison County, Alabama.

NOW THEREFORE, the parties hereto agree as follows:

1. Ninety percent (90%) of the total cost for the installation of passive warning devices on this project shall be paid with Federal Section 130 funds. The STATE will not be liable for any funds under this Agreement.
2. The estimated cost of this project payable by the parties is the amount set forth below:

Federal Section 130 Funds	(90%)	<u>\$34,773.32</u>
City Matching Funds	(10%)	<u>\$3,863.70</u>
Total City and Federal Funds toward project		<u>\$38,637.02</u>

3. The STATE will invoice the CITY for its pro rata share of the estimated cost. The CITY will pay this amount to the STATE.
4. A final inspection shall be made by the STATE after all work items have been completed.
5. The STATE will keep all records and documents pertaining to the project in suitable manner for audit for three years from the date of final payment in accordance with Federal Highway Administration Policies and Procedures. (Federal-Aid Policy Guide 23 CFR Section 140.922).
6. Upon completion and acceptance of this project by the STATE and RAILROAD, the CITY will assume full ownership and responsibility for the portion of the project work under the CITY'S authority and maintain the devices in satisfactory condition in accordance with the requirements of the STATE as outlined in the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), and subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975) the CITY will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, 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

President of the City Council of
the City of Huntsville, Alabama
Date: 02/10/22

compromise thereof arising out of or connected with the maintenance work performed by the CITY under this Agreement.

7. The STATE shall not be responsible for the maintenance of the passive warning devices once the CITY has been notified of the project completion and acceptance.
8. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
9. 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.
10. The CITY will be responsible at all times for all of the work performed under this agreement and, the City will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, 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 hereof arising out of or connected with the work performed under this Agreement.
11. In compliance with Act 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 this state can enjoy open trade.
12. Exhibit "M" and "N" is attached hereto as a part of this agreement.

(END OF PAGE)

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by those officers, 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 by the Governor of Alabama.

WITNESS BY:

City of Huntsville, Alabama

BY: _____
City Clerk (Signature)

BY: _____
Mayor (Signature)

Type Name of Clerk

Type Name of Mayor

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

BY: _____
William Patty
Chief Counsel
Alabama Department of Transportation

RECOMMENDED APPROVED:

BY: _____
Stanley C. Biddick, P.E.
State Design Engineer

By: _____
Edward N. Austin, P. E.
Chief Engineer

STATE OF ALABAMA, Acting by and through
the Alabama Department of Transportation

BY: _____
Transportation Director

The within and foregoing AGREEMENT is hereby approved on the _____ day of
_____, 20____.

BY: _____
Governor of Alabama

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

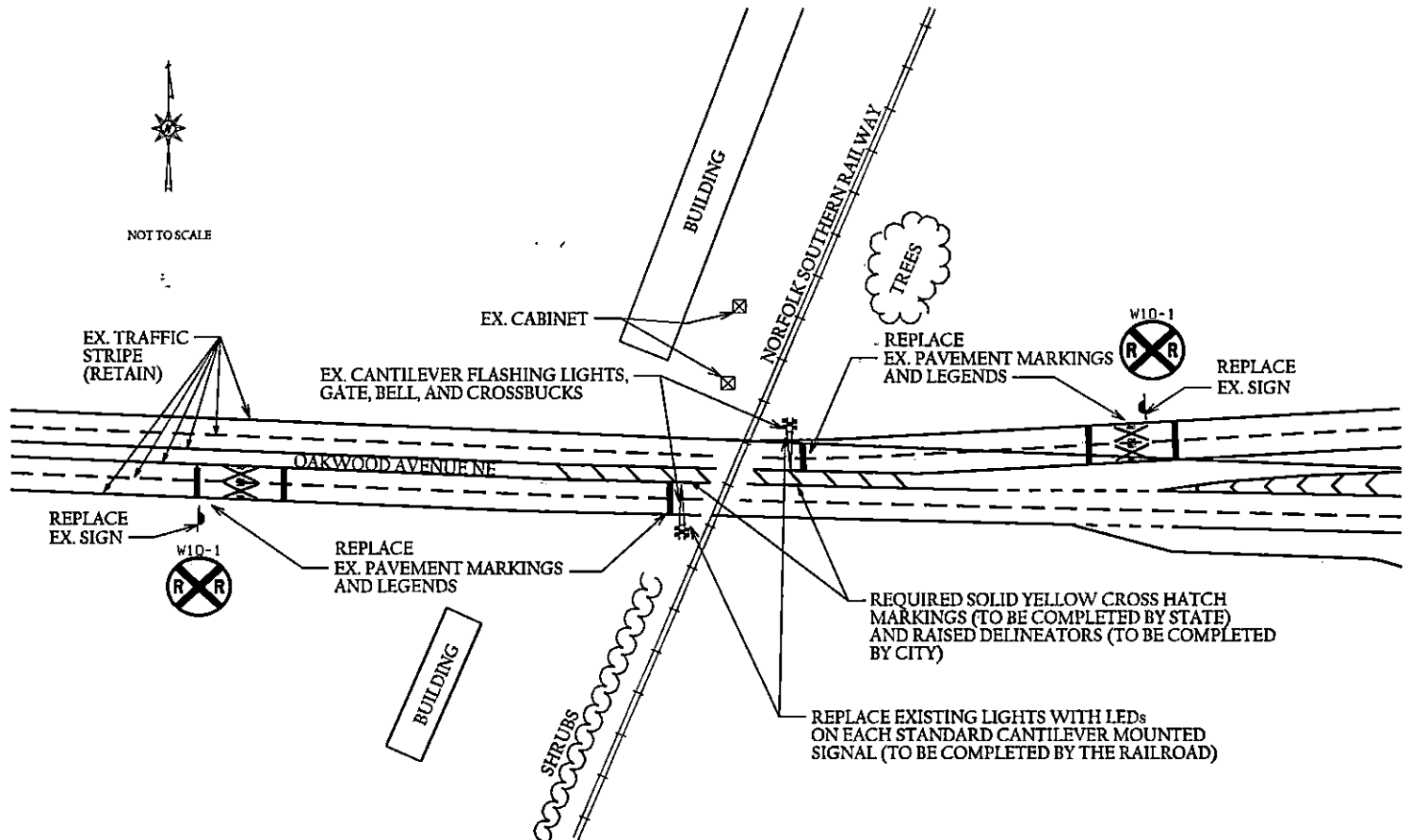
The STATE and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and 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.

STATE OF ALABAMA

DEPARTMENT OF TRANSPORTATION

RAILROAD GRADE CROSSING IMPROVEMENT



NOTES:

1. All work to be completed in accordance with ALDOT Standard Specifications and the National Manual on Uniform Traffic Control Devices, Latest Edition.
2. The Railroad is responsible for locating all utilities prior to construction.
3. The Railroad is responsible for providing required work zone traffic control in accordance with the National Manual on Uniform Traffic Control Devices, Latest Edition.

NUMBER AND TYPE OF TRACKS: One (1) main

EXISTING DEVICES: Gates, cross bucks, cantilever mounted signals, markings, and warning signs.

PROPOSED IMPROVEMENTS: Replace LED lights (to be completed by railroad)


SIGNING AND MARKING REQUIREMENTS: Replace warning signs, markings, and legends (to completed by State) and install raised delineators (to be completed by City)

DATE:	6/11/2021
PROJECT#:	RHPD-RR21(920)
COUNTY:	MADISON
LOCATION:	Oakwood Avenue
RAILROAD:	Norfolk Southern
REF. NO:	1427/XVIII-R
RR INV. NO:	731802T

RESOLUTION NO. 21-190

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 for rail-highway grade crossing safety improvements at Norfolk Southern crossing on Oakwood Avenue (DOT No. 731802T), 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 with the State of Alabama for rail-highway grade crossing safety improvements at Norfolk Southern crossing on Oakwood Avenue, (DOT No. 731802T)." consisting of a total of two (2) pages, and the date of March 11, 2021, 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 11th day of March, 2021.



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

APPROVED this the 11th day of March, 2021.



Mayor of the City of Huntsville,
Alabama



ALABAMA DEPARTMENT OF TRANSPORTATION
Design Bureau Traffic & Safety Operations

Rail-Highway Safety Programs Group
1409 Coliseum Boulevard, Montgomery, Alabama 36110



Kay Ivey
Governor

John R. Cooper
Transportation Director

February 17, 2021

Mayor Thomas Battle
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

**SUBJECT: ALDOT Rail-Highway Safety Programs Section 130 Funding Participation
Request for At-Grade Crossing Improvements**

Dear Mayor Battle:

The Alabama Department of Transportation (ALDOT) is committed to improving safety at rail-highway grade crossings in Alabama. Rail-highway grade crossing safety improvements considered at the referenced location includes, but is not limited to, any of the following: installing new grade crossing warning devices, modifying/upgrading existing warning devices, relocating warning devices, crossing elimination/consolidation, or other crossing safety improvements.

DOT No. **731802T** on **Oakwood Avenue NE** in **Huntsville, Alabama** has become eligible to receive Federal funds for rail-highway grade crossing safety improvements through ALDOT Section 130 Safety Program. The preliminary estimated cost of improvements is **\$30,000.00**. The estimate cost of improvements is subject to adjustment upon the receipt of the railroad force account estimate based on current railroad costs. The railroad force account estimate will be the cost shown on the anticipated contract agreement.

Subject to availability, the Federal Highway Administration (FHWA) in accordance to Title 23 U.S.C. 130(f)(3), will fund ninety percent (90%) of the Section 130 Program grade crossing safety improvements. In order for this location to be processed for FHWA approval and authorization, the city/town/county governments are required to participate by committing to providing a ten percent (10%) funding match for roadways under their respective authorities. In the event of a city/town/county government's inability or unwillingness to commit to provide the requested ten percent (10%) funding match, the referenced location is subject to be removed from the program for safety improvements due to lack of funding participation for the eligible fiscal year.

Please note, due to the Code of Federal Regulations, 2 CFR 200.306 Cost sharing or matching, federal funds cannot be used to match other federal funds. Therefore, the ten percent (10%) match funding source cannot be from a federal funding source such as a federal grant unless specific written approval has been granted and proof submitted with the return of this letter.

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

Date: 3-11-2021

Check applicable box below.

A response is needed within ten (10) business days from the date of the attached letter.
Remit both pages to the below provided address.

☒ **Yes. City of Huntsville, Alabama** will commit to providing the requested ten percent (10%) funding match for the referenced location; acknowledges funds are available; and will provide funds upon receipt of invoice by the Alabama Department of Transportation. It is understood, following the receipt of this commitment, ALDOT will prepare a contract agreement with a detailed railroad force account estimate to be agreed upon and signed by the State, Railroad Company, and local road authority.

☐ **No. City of Huntsville, Alabama** will NOT commit to providing the ten percent (10%) funding match for the referenced location.

ROAD AUTHORITY:

The undersigned, as representative of their respective agency's interests, concurs with this letter of acceptance and acknowledgement to comply.

Tommy Battle, Mayor
Name and Title (Print)


Signature Date 3-11-2021

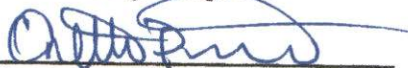
Please mail your response to:

Alabama Department of Transportation
ATTN: Rail-Highway Programs Group (DESIGN)
1409 Coliseum Blvd
Montgomery, Alabama 36109

If you need additional information, please contact Ms. Oretta D. Clemons at (334) 242-6828.

Sincerely,

Stanley C. Biddick, P.E.
State Design Engineer

BY: 
Oretta D. Clemons
Rail Programs Manager

ODC:drl
Enclosure

Cc: File
Mr. Travis Kilgore
Mr. Charles L. Wood