

**AGREEMENT
FOR
PRELIMINARY ENGINEERING, RIGHT-OF-WAY ACQUISITION,
UTILITY AND CONSTRUCTION
BETWEEN THE STATE OF ALABAMA AND
THE BALDWIN COUNTY COMMISSION**

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 Commission in Baldwin County, Alabama, hereinafter referred to as COMMISSION; in cooperation with the United States Department of Transportation, Federal Highway Administration, hereinafter referred to as FHWA; and

WHEREAS, a Visionary/Needs Plan has been developed for the urbanized areas in Baldwin County and certain transportation improvements and priorities are listed therein; and

WHEREAS, it is in the public interest for the STATE and the COMMISSION to cooperate toward the implementation of the Visionary/Needs Plan; and

WHEREAS, the STATE and COMMISSION desire to cooperate in a preliminary design engineering, construction engineering and inspection services, right-of-way acquisition, utility relocation, and construction program for the following Projects in Baldwin County listed in this Agreement:

PROJECT 1 – US 31 from Westminster Drive to SR 181

Preliminary Engineering	Add lanes	Eligible toward Project cost
Right-of-Way	Add lanes	Eligible toward Project cost
Utilities	Add lanes	Eligible toward Project cost
Construction	Add lanes	Eligible toward Project cost

PROJECT 2 – SR 181 from CR 64 to SR 104

Preliminary Engineering	Add lanes	Eligible toward Project cost
Right-of-Way	Add lanes	Eligible toward Project cost
Utilities	Add lanes	Eligible toward Project cost
Construction	Add lanes	Eligible toward Project cost

PROJECT 3 – SR 180 east of the Foley Beach Express

Preliminary Engineering	Add lanes	Eligible toward Project cost
Right-of-Way	Add lanes	Eligible toward Project cost
Utilities	Add lanes	Eligible toward Project cost
Construction	Add lanes	Eligible toward Project cost

PROJECT 4 – SR 180 west of the Foley Beach Express

Preliminary Engineering	Add lanes	Eligible toward Project cost
Right-of-Way	Add lanes	Eligible toward Project cost
Utilities	Add lanes	Eligible toward Project cost
Construction	Add lanes	Eligible toward Project cost

PROJECT 5 – SR 181 from SR 104 to CR 32

Preliminary Engineering	Add lanes	Eligible toward Project cost
Right-of-Way	Add lanes	Eligible toward Project cost
Utilities	Add lanes	Eligible toward Project cost
Construction	Add lanes	Eligible toward Project cost

**Project designations as shown above and on the attached Exhibit A to this agreement incorporate by reference construction engineering and inspection costs as well.*

WHEREAS, the STATE will be responsible for administering the program of projects set forth above with input from COMMISSION; and

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 STATE will be responsible for the development of plans, all other right-of-way acquisition, or utility relocation, and the construction of all Projects, unless otherwise agreed to by the parties.

- (2) The STATE and COMMISSION agree that Project costs, including all direct and indirect costs, will be funded in the manner set forth below.

	Total Estimated Costs	Estimated Funds from STATE	Estimated Funds from BP Settlement	Estimated Funds from Other
Preliminary Design Engineering, Right-of-Way Acquisition, Utility Relocation, and Construction, including engineering and inspection for all Projects	\$126,600,000	\$35,800,000	\$55,000,000	\$35,800,000

- (3) The STATE and COMMISSION anticipate that the individual Projects will be funded as set forth below, but the parties agree that the amounts distributed to each project may be adjusted to accommodate funding availability so long as the totals from each source remain the same and project costs not funded by BP SETTLEMENT funds are equally shared 50/50 between STATE and COMMISSION.

	Total Estimated Costs	Estimated Funds from STATE	Estimated Funds from BP SETTLEMENT	Estimated Funds from OTHER
Project 1 (US 31)	\$25,000,000	\$0	\$25,000,000	\$0
Project 2 (SR 181; CR 64 to SR 104)	\$18,700,000	\$4,350,000	\$10,000,000	\$4,350,000
Project 3 (SR 180; east of FBE)	\$17,600,000	\$3,800,000	\$10,000,000	\$3,800,000
Project 4 (SR 180; west of FBE)	\$21,700,000	\$5,850,000	\$10,000,000	\$5,850,000
Project 5 (SR 181; SR 104 to CR 32)	\$43,600,000	\$21,800,000	\$0	\$21,800,000
TOTAL:	\$126,600,000	\$35,800,000	\$55,000,000	\$35,800,000

- (4) Projects 1 through 4 shall be completed first. The completion of one or more of the projects may be contingent on the availability of OTHER Funds.
- (5) There is no obligation to fully fund each project before moving to the next project listed, except that the Construction Phase of Project 5 shall not commence until there are adequate assurances that Projects 1 through 4 are adequately funded through the

Construction Phase. The COMMISSION and STATE will take into account time needed for plan development and other preconstruction activities when scheduling projects for advancement.

- (6) The STATE and the COMMISSION agree that this is a 4-year Project funding plan for the Projects listed in this Agreement, including Exhibit A. Written notice shall be provided to the COMMISSION when the STATE authorizes any phase of a project listed in this Agreement and shall at that time provide the funding and project timetable for such project.
- (7) The STATE will provide a statement of expenditures as of January 30th regarding the amounts expended as of December 31st of the prior year for each year of this Agreement itemizing the amounts expended by STATE toward its funding obligation and summarizing the expenditure of BP Settlement funds and funds from Other Funds. The January 30th prior year report will be provided until either this Agreement is completed or otherwise terminates and will also be provided upon reasonable notice and request by COMMISSION.
- (8) All financial participation in this Agreement is based on supporting financial documentation provided by the STATE. The STATE shall periodically provide information to the other party concerning the costs incurred on each Project covered by this Agreement. All costs must be supported by appropriate financial documents that comply with all applicable laws, rules, and regulations concerning the expenditure of STATE or Federal funds.
- (9) A final review will be made of all Project records after the completion of all Projects. A final financial settlement will then be made between the parties as reflected

by the final review and this Agreement. A final audit will be furnished to the Department of Examiners of Public Accounts, in accordance with Act 1994, No. 94-414 and final financial disclosures and accounting made as required therein. Any overrun of the Total Estimated Cost of Project 1 will be borne by BP SETTLEMENT Funds. Any overruns of the estimated costs of the remaining projects will be a cost share 50/50 split between the STATE Funds and OTHER Funds. Any underruns of the Total Estimated Cost of \$126,600,000 will be reallocated to other transportation needs in Baldwin County by an amendment to this Agreement.

- (10) The terms of this Agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (11) Additional Projects or Project phases may be added to this Agreement by supplemental agreement if Project funds are available for the additional Projects or Project phases. The COMMISSION and STATE must approve any additional Projects or Project phases before they are eligible for financial participation and included in a supplemental agreement.
- (12) By entering into this Agreement, the COMMISSION is not an agent of the STATE, its officers, employees, agents or assigns. The COMMISSION is an independent entity from the STATE and nothing in this Agreement creates an agency relationship between the parties.
- (13) 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.

- (14) The Parties recognize that Section 23-1-63, Code of Alabama 1975, applies to this Agreement and may affect or delay the availability of funding or timing of a project.
- (15) Nothing will be construed under the terms of this Agreement by the STATE or the COMMISSION that will cause any conflict with Section 23-1-63, Code of Alabama 1975.
- (16) 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 officers, officials and persons thereunto duly authorized, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

BALDWIN COUNTY COMMISSION, ALABAMA

BY: _____
County Administrator (Signature)

BY: _____
Chairman (Signature)

Type name of Administrator

Type name of Chairman

APPROVED AS TO LEGAL FORM AND CONTENT:

BY: _____
Jim R. Ippolito, Jr.
Chief Counsel
Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

Vince Calametti
Region Engineer

Don T. Arkle, P.E.
Chief Engineer

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

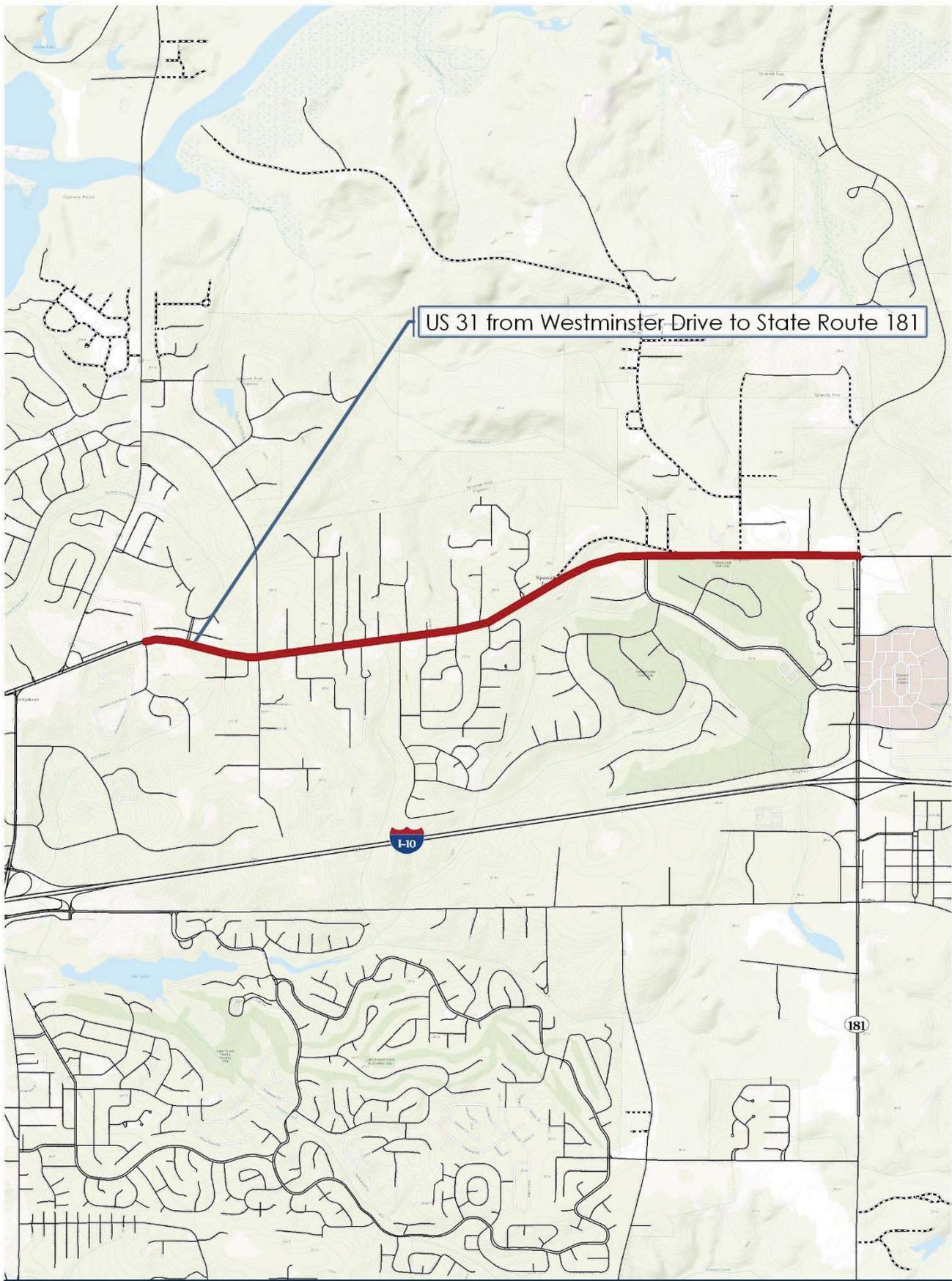
John R. Cooper, Transportation Director

The foregoing Agreement is hereby executed in the name of the State of Alabama and signed by the Governor on this _____ day of _____, 20_____.

GOVERNOR OF ALABAMA
ROBERT BENTLEY

EXHIBIT A – PROJECT MAPS

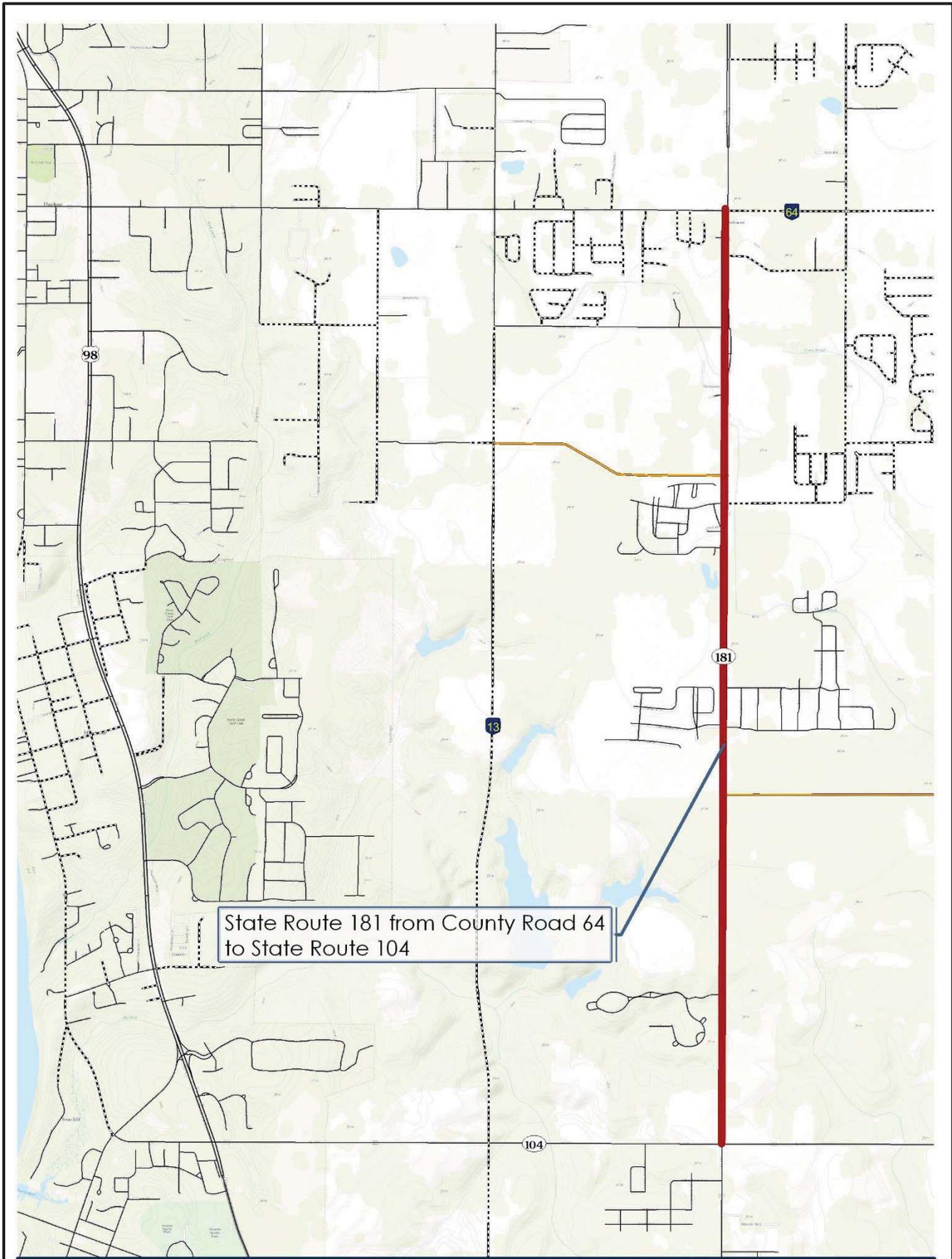
US 31 from Westminster Drive to State Route 181



BP Funding Agreement Projects
PROJECT 1 – US 31 from Westminster Drive to SR 181

Baldwin County
Highway Department 2016



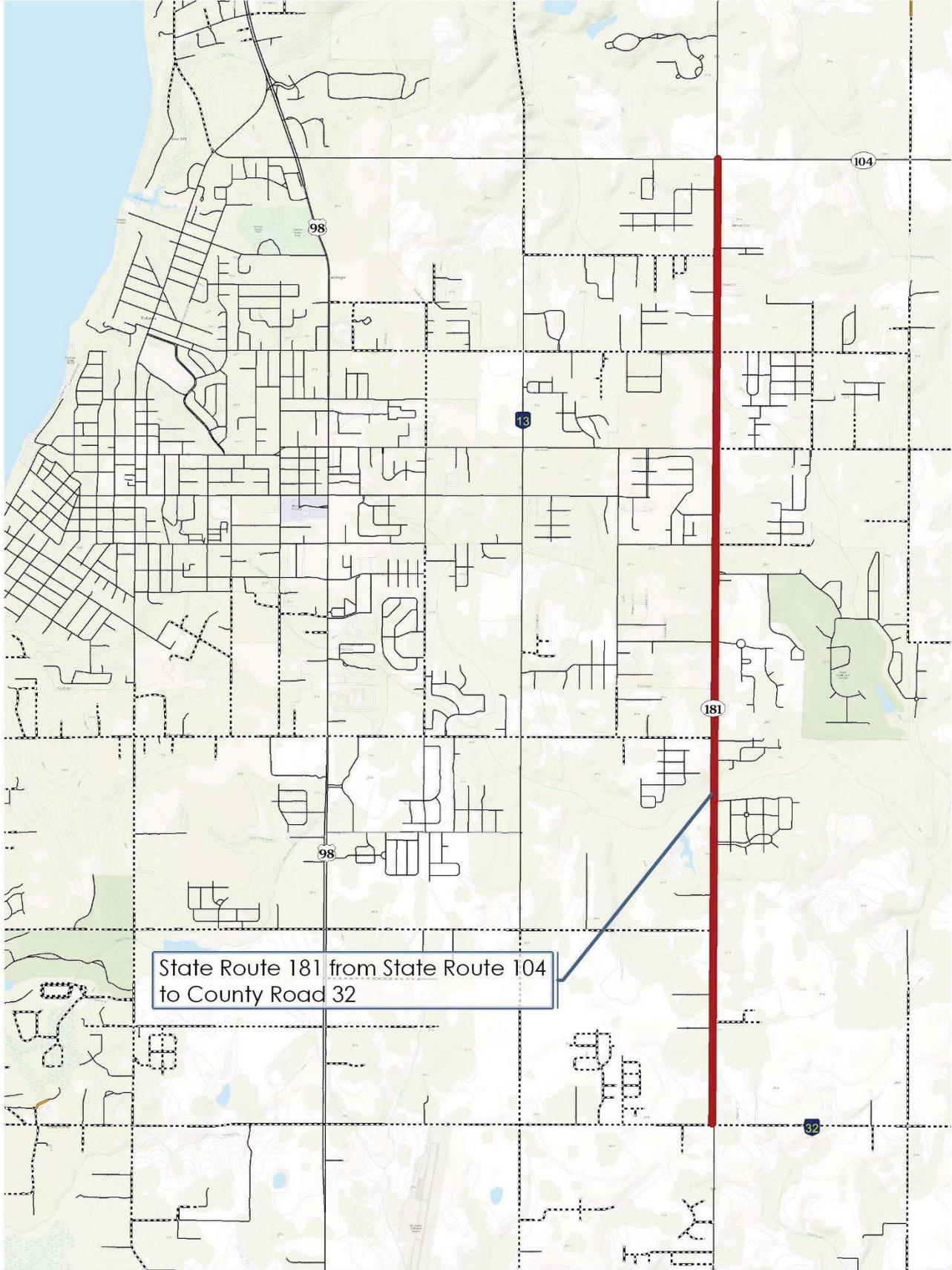


State Route 181 from County Road 64 to State Route 104

BP Funding Agreement Projects
PROJECT 2 – SR 181 from CR 64 to SR 104

Baldwin County
Highway Department 2016

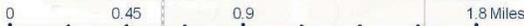


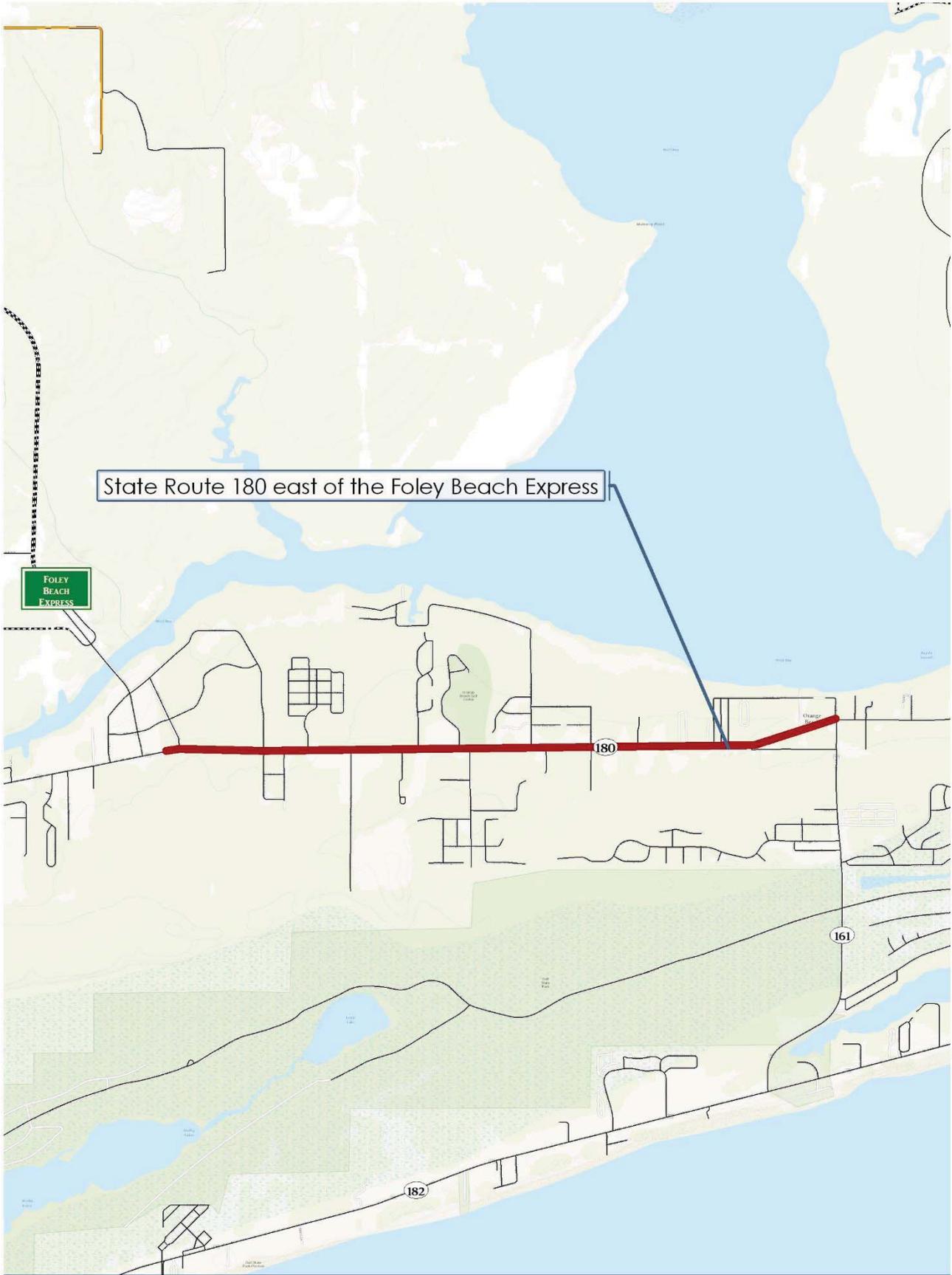


State Route 181 from State Route 104
to County Road 32

BP Funding Agreement Projects
PROJECT 5 – SR 181 from SR 104 to CR 32

Baldwin County
Highway Department 2016





State Route 180 east of the Foley Beach Express

FOLEY
BEACH
EXPRESS

180

161

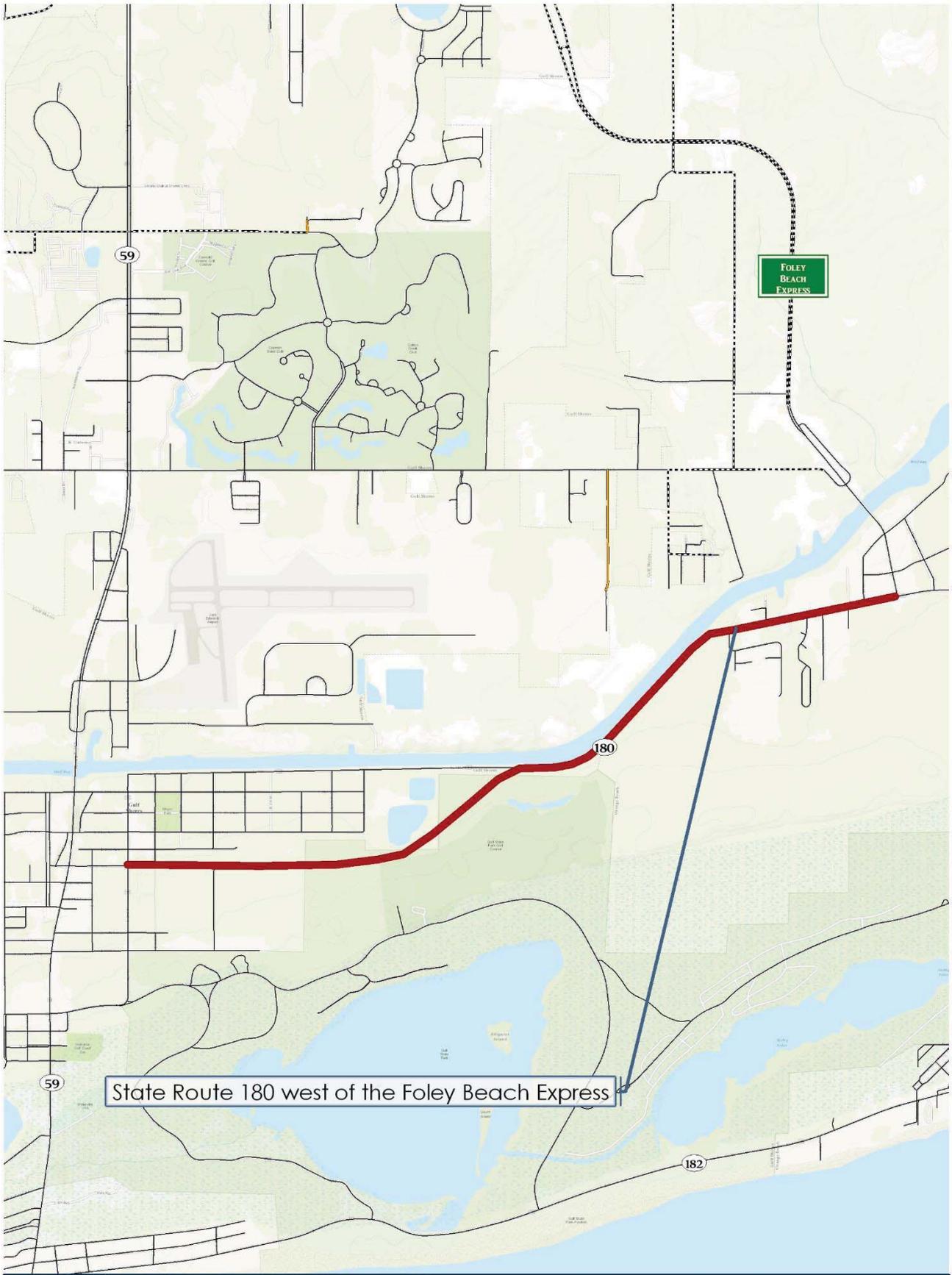
182

BP Funding Agreement Projects
PROJECT 3 – SR 180 east of the Foley Beach Express

Baldwin County
Highway Department 2016

0 0.375 0.75 1.5 Miles





State Route 180 west of the Foley Beach Express

BP Funding Agreement Projects
 PROJECT 4 - SR 180 west of the Foley Beach Express

Baldwin County
 Highway Department 2016



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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.