***AGREEMENT***

FEDERAL AID PROJECT
Enter Project Number
Enter County COUNTY

This agreement is made and entered into by and between the State of Alabama, acting by and through the Alabama Department of Transportation (hereinafter the "STATE"); and Enter Railroad, (hereinafter the "RAILROAD");

**WITNESSETH:**

**WHEREAS**, the Select One Enter Plan Summary (hereinafter the "BRIDGE") on over the tracks of the RAILROAD at DOT number Enter DOT Number, railroad milepost Enter Milepost in Enter County County, Alabama;

**WHEREAS**, the STATE has identified the construction it plans to do as Federal Aid Project Enter Project Number in Enter County County (hereinafter the "PROJECT");

**WHEREAS**, the proposed construction of the PROJECT will necessitate the granting of a temporary construction easement by the RAILROAD to the STATE for the purpose of constructing and maintaining the BRIDGE; and

**WHEREAS**, the RAILROAD is willing to cooperate with the STATE in the accomplishment of the PROJECT in the interest of public improvement and the safety and protection of the traveling public;

**NOW, THEREFORE**, the STATE and RAILROAD, do hereby covenant and agree with each other as follows:

1. This agreement is made and expressly executed in the names of the Parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the Parties to be an agreement or contract under seal.

2. In accordance with the Federal Highway Administration's Federal Aid Highway Policy Guide, Title 23 CFR 646, Subpart B, no cost will be required of the RAILROAD for construction of this PROJECT. Federal funds will pay for Select One percent (Select One%) of the PROJECT'S cost and STATE funds will pay for Select One percent (Select One%) of the PROJECT'S cost.

3. The RAILROAD, without warranty and to the extent that its present right, title and interest permit or enable it to do so, hereby grants to the STATE a temporary construction easement to construct and maintain the BRIDGE. The location and dimension of the easement is shown on Exhibit "A" which is attached hereto and is made a part of this agreement. The construction work for the PROJECT will be accomplished in accordance with the plans, specifications and special provisions prepared by the STATE and approved by the RAILROAD, which approval shall not be unreasonably withheld, and in accordance with all applicable provisions of the current State of Alabama Department of Transportation Standard Specifications

for Highway Construction, latest edition. The plans, specifications, special provisions and standard specifications are hereby made a part of this agreement whether or not they are attached to this agreement. Special Provisions attached hereto, are a part of this agreement notwithstanding the foregoing,

a. Such easement, hereby granted and shown as Exhibit "A", which becomes a part of this agreement, is limited to the use for highway purposes of space required for BRIDGE approaches to said BRIDGE and for columns, foundations and other parts of the BRIDGE and for drainage purposes, and is limited vertically by a horizontal surface 20 feet above the roadway surface of said BRIDGE, together with the use of a reasonable additional space for construction and for access to the highway facilities for maintenance purposes, it being understood that the easement will not restrict the RAILROAD from utilizing the airspace under the said BRIDGE for RAILROAD operations and for wirelines or other facilities which will not encroach on the reasonable requirements for maintaining the highway facilities. All other rights are reserved unto the RAILROAD.

b. The STATE will maintain the BRIDGE after its completion, and in its maintenance of the BRIDGE the STATE will obtain permission from the RAILROAD before undertaking any work which may interfere with or be a real or potential hazard to passage of trains or other RAILROAD operations. The STATE will bear all expenses for watchman and flagging service which the RAILROAD may reasonably deem necessary during the construction and maintenance of the PROJECT.

c. The RAILROAD will notify the STATE prior to undertaking the use of airspace over the easements and prior to starting the construction of any fixed facilities within 8 feet of the underside of the BRIDGE or within 15 feet of the easement. The RAILROAD agrees that any such use will afford reasonable protection and safety to the highway facilities and highway traffic and will not unreasonably interfere with maintenance of the BRIDGE by the STATE.

d. Legal title and ownership of any structure included in this PROJECT erected by the STATE on this easement is in the STATE.

4. The STATE will, without cost or expense to the RAILROAD, perform all necessary BRIDGE work required on the PROJECT, together with the necessary approaches and drainage structures thereto, across the right-of-way and over and above the tracks of the RAILROAD at the aforementioned location, all in accordance with the plans, specifications and special provisions. The work associated with the BRIDGE work will be accomplished and performed in all respects in accordance with the reasonable requirements of the proper officials of the RAILROAD or their duly authorized representatives, looking to the prevention of interference with, interruption of, danger or delay to RAILROAD operations over and above the tracks of the RAILROAD.

5. The RAILROAD with its regular construction or maintenance forces and personnel, and at its standard schedule of wages and working hours and working in

accordance with the terms of its agreements with such employees, or by contract to the lowest bidder of a least three responsible contractors, will perform certain work in connection with the BRIDGE construction as shown on the detailed estimate of the RAILROAD hereto annexed and hereby made a part of this agreement. The estimated total cost of the PROJECT for the RAILROAD for flagging and inspection cost is as follows:

Enter Railroad Total Cost $_____

6. Within 12 months of completion of the PROJECT, the RAILROAD will render a final and complete detailed billing to the STATE for all cost and expense of the RAILROAD for the work performed in connection with the construction of the BRIDGE. Amounts previously reimbursed to the RAILROAD by the STATE on progress billings will be shown as a deduction on the final bill. The progress and final bills will be subject to such adjustments as may be found necessary for compliance with the Federal Highway Administration's Federal Aid Highway Policy Guide, Title 23 CFR 140, Subpart I. The STATE will pay the RAILROAD the amount due the RAILROAD on such bills within sixty (60) working days after receipt when the bills are submitted in accordance with all requirements of such Policy Guide and the STATE'S invoice requirements.

7. The STATE will reimburse the RAILROAD one-hundred percent (100%) of the cost and expense for preliminary engineering, flagging protection and watchman services by the RAILROAD in connection with or incident to the proposed work when submitted on billings by the RAILROAD in accordance with the Federal Highway Administration's Federal-Aid Policy Guide, Title 23, Code of Federal Regulation 140, subpart I, and meeting the STATE'S invoice requirements.

8. The RAILROAD agrees to submit its bills for reimbursement in accordance with the Federal Highway Administration's Federal Policy, Title 23 CFR 140, Subpart I, and the STATE'S invoice requirements. The provisions of 23 CFR Part 140, Subpart I, are incorporated by reference in this agreement.

9. No STATE work of any character will be commenced on or above the right-of-way or property of the RAILROAD until the RAILROAD has been duly notified by the Contractor for the STATE of the date the Contractor proposes to begin work and until the Contractor has been notified by the RAILROAD that the Contractor may begin work. Such work at all times will be subject to the inspection and approval of the RAILROAD, which approval will not be unreasonably withheld, and the STATE will require the Contractor to comply with the requirements of the special provisions governing or controlling temporary work and protection to the operations of the RAILROAD as approved by the STATE and the RAILROAD.

10. The STATE will require its Contractor, before commencing the work of constructing the BRIDGE, to furnish evidence acceptable to the STATE and the RAILROAD that the Contractor has provided Public Liability and Property Damage Insurance and Railroad Protective Liability Insurance in the amounts specified in Special

Provision attached hereto and in a form approved by the STATE and the RAILROAD.

11. The STATE assumes entire responsibility for the construction and maintenance of the BRIDGE located over the RAILROAD'S right-way, and nothing contained herein will be construed to place upon the RAILROAD'S liability for injury to or death of persons or loss or destruction of or damage to property, arising from or in any manner connected with any failure to properly construct the BRIDGE.

12. The STATE'S contractor will be responsible for furnishing the traffic control devices and maintaining traffic during any period of time when any construction is taking place within the traveled way or shoulder area of the public street or highway.

13. Participation by Minority Business Enterprises (MBE) and Disadvantaged Business Enterprises (DBE) in Federal-Aid Programs:

    a. It is the policy of the U.S. Department of Transportation that Minority Business Enterprises as defined in 49 CFR Part 26 and Disadvantaged Business Enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE and DBE requirements of 49 CFR Part 26 apply to this agreement.

    b. Minority Business Enterprises and Disadvantage Business Enterprises Obligation.

       The recipient of funds under the terms of this Agreement agrees to ensures that Minority Business Enterprises as defined in 49 CFR Part 26 and Business Enterprises shall have the maximum opportunity to participate in the performance of contracts and sub-contracts financed in whole or in part with Federal funds and to take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that MBE and DBE have the maximum 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.

    c. 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 taken by the STATE as it deems appropriate.

14. All persons working on or over the RAILROAD'S tracks must comply with the RAILROAD'S safety rules requiring hard hats, eye protection and safety shoes.

15. The contractor for the STATE shall contact the RAILROAD for information about obtaining a copy of the RAILROAD'S safety video.

16. The covenants herein contained will, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the Parties hereto.

17. This agreement will be construed and enforced in accordance with the laws of the State of Alabama.

18. 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 Number 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. For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution.

19. For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution.

20. In the event of the proration of the fund from which payments of the STATE'S obligations are to be made, this agreement will be subject to termination.

21. This agreement is subject to termination by the STATE in the event that sufficient funds are not appropriated by the Legislature of Alabama for the STATE to make the payments due pursuant to this agreement in subsequent fiscal years.

22. Termination of this agreement or work, on the PROJECT, for any reason, shall not diminish or reduce the STATE'S obligation to reimburse the RAILROAD for expenses incurred in accordance with this agreement prior to the date of termination.

23. The RAILROAD 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 compromise thereof arising out of or connected with the work performed by the RAILROAD or it's Contractor under this Agreement.

24. 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.

25. By entering into this agreement, the RAILROAD is not an agent of the STATE, its officers, employee's agents or assigns. The RAILROAD is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.

26. In compliance with Act 2016-312, the RAILROAD 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.

27. In accordance with Title 23, U.S.C. Sec 313, Buy America, steel and iron materials and products used on this rail project shall comply with the Buy America requirements of 23 CFR 635.410. Minor items of foreign steel may be used if their cost is less than $2,500 or one-tenth of one percent of the agreement amount, whichever is greater. Eligibility for reimbursement is subject to audit for compliance with the Buy America Requirement.

28. Exhibit “M” is attached hereto is made a part of this agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed in their names in duplicate, each being an original, and this AGREEMENT is deemed to be an AGREEMENT or contract under seal that is dated and effective on the date hereinafter stated as the date of approval by the Governor of Alabama.

Enter Project Number
Enter Project Summary
Enter County County

Enter Railroad

BY: _____

TITLE:_____

DATE:_____

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

BY:_____
William F. Patty
Chief Counsel
Alabama Department of Transportation

RECOMMENDED APPROVED:

BY:_____
Stanley C. Biddick, P.E.
State Design Engineer
Alabama Department of Transportation

BY:_____
Edward N. Austin, P.E.
Chief Engineer
Alabama Department of Transportation

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.