

RESOLUTION NO. 12-129

BE IT RESOLVED by the City Council of the City of Decatur Alabama, that it hereby approves the attached Agreement for Employment Terms and Conditions between the City and the Metropolitan Planning Organization for the Decatur Urbanized area; and accordingly the Mayor is authorized and directed to execute that agreement on behalf of the City.

ADOPTED THIS 29th DAY OF MAY, 2012.

the terms and conditions hereafter set out; and

WHEREAS, the MPO is directed by its Policy Board, but plans to create an Executive Board (or has created an Executive Board by the date of this Agreement). Any reference herein to the MPO shall be deemed to refer to the Executive Board, as well.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party, the MPO and the City hereby agree as follows:

1. ***ENGAGEMENT OF EMPLOYEES***

The City will accept as its employees those persons heretofore employed by NARCOG, but whose time and duties were exclusively dedicated to the MPO. The City will also accept as its employee any person hereafter designated from time to time by the Executive Board for the purposes for which the initial employees are accepted, namely to be employees whose employment time and duties shall be dedicated exclusively to the MPO. Such persons shall herein be referred to as "employees" or, if the reference is singular, "employee." The Executive Board will be the appointing authority for the hiring of MPO employees and making the final determination as to any dismissal or removal of any MPO employee.

2. ***STATUS OF EMPLOYEES***

Each employee shall be an unclassified or exempt employee of the City under the City's personnel system or policy.

3. ***COMPENSATION OF EMPLOYEES***

Each employee shall be compensated at a rate recommended by the Executive Board and the Personnel Board of the City of Decatur, Alabama and then approved by the Decatur City Council for placement in the appropriate Range and Step in the City's established Pay Plan.

4. ***EMPLOYEE JOB DUTIES***

Since the employees will be employees of the City, their duties shall be under the direct supervision of the Mayor of the City of Decatur. The MPO shall assist in the development of job descriptions for each employee for adoption by the Decatur City Council using normal City procedures. The City will coordinate the duties of each employee with the MPO and each employee's time and efforts shall be exclusively devoted to the MPO's service.

5. ***EMPLOYEE SUPERVISION AND DISCIPLINE***

a. The City recognizes that the MPO has primary direction and control over the work performance of the employees and the MPO recognizes that the employees should, nonetheless, cooperate with City officials to the fullest practicable extent in and about the use of City's facilities, enjoyment of its benefits and their conduct as employees. The MPO intends, within the foregoing limitations, that the City shall have as much administrative authority, subject to the policies and

objectives of the MPO, as it can reasonably have over the employees as far as their conduct, use of City facilities and as to the provision of employment benefits are concerned.

b. The employees, insofar as their conduct, evaluation and disciplinary matters are concerned, shall be under the authority of the City the same as other unclassified or exempt employees of the City. However, any employee under this agreement who is subjected to a disciplinary measure by the City shall have the right to appeal that measure to the Executive Board, which shall have ultimate and final authority over such decisions. The City agrees to abide by any such decision the MPO may make with respect to an appeal of a disciplinary measure regarding any employee and the MPO agrees to give due consideration to the City's interests in reaching such determinations.

c. Should the Executive Board by a two-thirds vote of its entire membership after a hearing determine that an employee should be disciplined, the City agrees to implement such disciplinary measures as the Executive Board may direct as to each employee, up to and including termination, provided that due process has been afforded the employee.

6. *EMPLOYEE BENEFITS AND EMPLOYEE, BOARD AND MPO EXPENSES*

a. Once the required City forms are completed the employees shall be entitled to all benefits to which other similarly situated unclassified or exempt employees of the City are entitled, including, but not limited to health insurance and other insurance and participation in the City's Retirement Program. The calculation of available or accumulated vacation for the initial employees will take into consideration the employee's time in service as NARCOG employees carrying out the responsibilities of the MPO. All other City benefits for the initial employees will be determined and accumulated in the same manner as other similarly situated unclassified or exempt employees of the City pursuant to City Personnel Policies.

b. The MPO shall make available to the City the necessary funds to pay all MPO related expenses. The City shall pay, with MPO funds or be reimbursed with MPO funds, for all employee and MPO Policy Board and Executive Board expenses, such as, without limitation, travel, lodging, per diem, professional dues, continuing education, operating costs and all other MPO expenses as directed by the MPO, subject to compliance with City required documentation.

7. *OFFICE FACILITIES*

The City, at a reasonable cost to be mutually agreed to by the parties, shall supply the employees with sufficient office space to effectively carry out their duties to the MPO. City may, without obligation and in its discretion, supply the employees with such office furnishings or equipment as it may determine. Otherwise, the MPO shall be responsible for supplying same.

8. *COMMUNICATION FACILITIES*

The City shall furnish access to telephone, internet and other necessary services to the

employees as directed by the MPO and be paid for same out of MPO funds.

9. ***EQUIPMENT AND SUPPLIES***

The City shall have no duty to furnish equipment, furniture or supplies at its expense for the use of the employees and responsibility for and control of same shall rest exclusively with the MPO, but the City agrees to procure and be paid for same out of MPO funds as directed by the Executive Board.

10. ***USE OF MPO FUNDS TO REIMBURSE CITY'S EXPENSES***

It is the intention of the parties that the City should incur no expense as a result of accepting the employees as its employees or otherwise as a result of entering this agreement. To that end, the City, with MPO funds, shall reimburse itself for any and all expenses it incurs with respect to the performance of its obligations under this Agreement including, without limitation, compensation of and provision of benefits to the employees, provision of telephone, internet or other such services or access, MPO designated expenses, any additional costs the City might incur in the way of workers compensation premiums or other employee-related expenses and any other expense eligible for reimbursement from MPO funds. The parties shall mutually agree on the amount of reasonable administrative costs to be paid to the City for the additional personnel time necessary to handle the accounting for personnel costs, indirect costs, direct costs and any other expenditure not covered by other provisions of this agreement. The City shall furnish the MPO with monthly statements of all such expenses and reimbursements. In the event the MPO disputes any expenses or reimbursement, the parties shall promptly make good faith efforts to resolve the dispute. Failure to resolve any such dispute shall be grounds for termination of this agreement by either party upon sixty (60) days notice to the other.

11. ***INSPECTION OF RECORDS***

The MPO shall have the right to inspect upon reasonable notice and during normal business hours those records maintained by the City which relate to compliance with this Agreement including the City's personnel, accounting and financial records related thereto or such other records as may be reasonably necessary to assure such compliance or as may be required by State or Federal authorities. The MPO shall maintain the confidentiality of any and all records provided to it by the City which are related to other business of the City outside this contract. The City shall produce all relevant books and records for the MPO's inspection at City's office or other mutually agreeable location. The City shall permit any duly authorized representative of the MPO to examine during normal business hours and on a nondisruptive basis any and all records as may be reasonably necessary to ensure the City's compliance with this requirement.

12. ***RELATIONSHIP OF PARTIES***

a. The City shall have no liability for the debts or obligations of the MPO. It is further agreed that neither the MPO nor the employees shall at any time use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies or other things or for any purpose whatsoever, other than as specifically authorized by the City.

b. The relationship of the City to the MPO shall at all times be that of an accommodation party. The City does not assume nor shall it have any responsibility nor authority for or over the means by which or the manner in which the employees perform their job duties, but this shall not be construed to mean that the employees do not have to conduct themselves in keeping with the City's general policies which relate to their status as City employees and use of the City's facilities.

13. ***MPO MEMBERS' PAYMENT SHARE OBLIGATIONS***

It is acknowledged that each municipal and county member entity of the MPO is obligated to pay a specific proportionate share of matching monies for funds which are appropriated to the MPO through the State of Alabama Department of Transportation out of federal funds. The City's obligations hereunder are all agreed to on the assumption each member will pay its specific portion of those matching funds and the failure of any member to do so shall constitute grounds for the City to terminate this agreement after demand for payment of such funds and failure of any member to pay same as demanded. Such termination may be made on ten (10) days notice to the MPO unless the payment complained of is made within said ten (10) days, in which case there shall be no termination pursuant to this paragraph.

14. ***EFFECTIVE DATE AND TERM OF AGREEMENT***

The effective date of this Agreement shall be the ____ day of _____, 2012 and the term shall be continuous until terminated by mutual agreement or as provided elsewhere herein.

15. ***TERMINATION***

Either party shall have the right to terminate this Agreement at any time, provided it first gives the other party written notice at least ninety (90) days in advance of such termination, unless the other party agrees to an earlier date in writing. If shorter notice is specifically provided herein for termination due to specific reasons, the shorter time shall apply in such case. In the event, for any reason, the MPO should cease to exist, this Agreement shall terminate immediately upon the MPO's last day of existence.

16. ***RELATIONS WITH STATE AND FEDERAL AGENCIES***

The City recognizes that the MPO must stay in good standing with the state and federal agencies which provide its funding and with whose rules and regulations it must comply. In the exercise of its control over the employees the City shall do so in keeping with the MPO's obligations and so as not to jeopardize the MPO's good standing with those agencies whose rules and regulations MPO must observe.

17. ***MISCELLANEOUS PROVISIONS***

a. All rights and remedies given to either party by this Agreement shall be in addition to and cumulative with any and all other rights and remedies existing or implied, now or hereafter available to the MPO and the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right specifically given by this Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the MPO and the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. In entering into the agreement, the MPO and the City do not waive, and hereby expressly reserve, any and all rights that they have under applicable federal and state law, except that both acknowledge that neither may have any claim against the other for exercise of its options, solely in its discretion, with or without such cause, under Section 15 hereof.

b. It is acknowledged that the MPO has engaged the City for the purposes of this Agreement based upon the resources and abilities possessed by the City and the City has agreed to its terms solely as an accommodation to the MPO. It is thus agreed that neither party may transfer or assign this Agreement nor any part of it nor any duty pursuant to it to any other party except by mutual agreement of the MPO and the City expressed in writing.

c. The terms hereof shall be binding upon the parties and their successors, assigns and representatives.

d. This document contains the entire agreement of the parties and all other representations or understandings outside the written terms of this Agreement are merged herein and of no other effect.

e. This Agreement may be amended or modified only in writing signed by duly authorized agents of each party.

f. Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion,

vandalism, storm or other similar catastrophes; national emergencies; insurrection; terrorism, riots; wars; or strikes, lockouts or work stoppages. Moreover, neither party shall be held in default under, or in noncompliance with the provisions of the agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of either party to anticipate and control.

g. This Agreement may be executed in multiple counterparts, each of which shall be effective as an original document.

h. This Agreement shall be construed in accordance with the laws of the State of Alabama. Its words and phrases shall be given their ordinary meaning unless otherwise stated. The Agreement has been negotiated at arm's length by each party and shall not be construed strictly against either party.

i. Should any section or other portion of this agreement be held void, invalid or unenforceable by a court of competent jurisdiction, for any reason, all other sections, portions and provisions shall nonetheless continue in full force and effect as though the section or portion so held void, invalid or unenforceable had never been included herein.

j. Any notice from the City to the MPO shall be to its Chairman and to the City to its Mayor.

IN WITNESS WHEREOF, we have set our hands hereto and and agree to be bound hereby as of the date written above.

The City of Decatur, Alabama, a municipal corporation

By: _____

Its: _____

The Metropolitan Planning Organization for the Decatur Urbanized Area, a public authority

By: _____

Its: _____

STATE OF ALABAMA)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby

certify that _____, whose name as _____ of the City of Decatur, Alabama, a municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, on the day the same bears date.

GIVEN under my hand and seal, this the _____ day of _____, 2012.

Notary Public

STATE OF ALABAMA)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that _____, whose name as _____ of The Metropolitan Planning Organization for the Decatur Urbanized Area, a public authority, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, on the day the same bears date.

GIVEN under my hand and seal, this the _____ day of _____, 2012.

Notary Public