

Dr. William Truly, Jr.
MAYOR

The City of Canton
One people, one voice, one goal

John W. Carroll, Sr.
CITY CLERK

ALDERMEN:
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Fred Esco, Jr.
Eric Gilkey
Les A. Penn
Daphne Johnson Sims
Tim C. Taylor
Lafayette E. Wales

April 16, 2020

Attorney Mike Espy
Attorney, Madison County Board of Supervisors
125 West North Street
Canton, Mississippi 39046

Via Electronic Mail
mike.espy@madison-co.com

Re: *MOU Martin Luther King Drive Project*

Dear Attorney Espy:

Please find attached, a proposed Memorandum of Understanding (MOU) regarding the rebuilding, overlay, and striping of the above-referenced project. A brief history on this matter is as follows below:

- On December 19, 2019, the Attorney General's Office approved the following Interlocal Agreement regarding the same identical project with the same monetary allocation of \$190,000 and
- On April 7, 2020, the Mayor and Boar of Aldermen requested that the County complete this project with that same monetary allocation, with the responsibility of costs, construction, and management; whereas, under the 2019 Interlocal, the responsibility of constructing, management and the like, were borne by the City of Canton.

Accordingly, please place the following before the Board of Supervisors for a consideration and determination on same, as the deadline pursuant to the Interlocal Agreement for the City to complete the work on the project is August 31, 2020. In the event the County, is not amenable to taking on the project through the MOU, an extension of the August 31, 2020 deadline would be practical and reasonable under the circumstances.

Thanks for your consideration to this matter. If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

CITY ATTORNEY, CITY OF CANTON



Kimberly Banks, Esq.

Enclosures

c: Shelton Vance

MEMORANDUM OF UNDERSTANDING

Martin Luther King Drive Rebuilding, Overlay, and Striping Project City of Canton, Mississippi

This Agreement ("Agreement") is made and entered into by and between the City of Canton, Mississippi, a municipal corporation organized and existing under the laws of the State of Mississippi (the "City"), and Madison County, Mississippi, a political subdivision of the State of Mississippi (the "County"), for the purpose of establishing the agreed conditions, funding source, and subsequent acts to complete the proposed project as described below, effective as of the date of the last last execution below.

WHEREAS, the County has announced its intentions to rebuild, overlay, and stripe the entire portion of Martin Luther King Drive within the City limits of the City of Canton (hereinafter referred to as the "Project"); and

WHEREAS, it is anticipated that approximately \$190,000.00 in County funds is set aside for the project, and the above-referenced County funds were obligated for the Project as of December, 2019; and

WHEREAS, the County will be responsible for all costs, construction, and management, including staffing, associated with the Project, and shall expend all funds allocated for the Project; and

WHEREAS, the City and the County desire to set forth more fully the understanding of the parties with respect to the process by which the Project will be accomplished, and this document supersedes all other agreements regarding the Project unless herein specified; and

WHEREAS, the terms of this Agreement shall end once the Project is complete; and

WHEREAS, it is in the best interest of the citizens of Madison County and the City of Canton to enter into and execute this Agreement.

NOW THEREFORE, for and in consideration of the above premises, the parties do hereby mutually enter into this Memorandum of Understanding, and agree as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

- A. The County is hereby designated as the sponsor for the Project and herein will:
 1. The County will designate a Project Director, who will serve as the person of responsible charge for the Project and coordinate the activities with the City Public Works Director, as

needed.

2. The County will be responsible for all costs, construction, and management, including staffing, of the Project.
 3. The County agrees to be bound and comply with all Federal and State laws with respect to roads and bridges in the completion of the Project.
 4. The County bears the sole responsibility of procuring, and paying any and all consultants and contractors.
 5. The County shall be responsible for any and all acquisition of right-of-way, temporary easements, construction easements, and the like during the course of the Project.
- B. The City will:
1. Allow the County to design and construct the Project pursuant to the terms as described herein.
 2. The Director of Public Works will work with the County during the various phases of work as need to ensure the goal of producing the Project that will be acceptable to the City Union completion.

ARTICLE II. GENERAL PROVISIONS

- A. This Agreement is entered into in order to provide for the infrastructure improvements for the details of the Project as described herein, and necessary for the public interest for the citizens for the City and the County to cooperate by entering into this Agreement.
- B. This Agreement will enhance the general welfare of the City and the County and the citizens of each, and, consequently, the economic development of the City and County.
- C. This Memorandum of Understanding shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice shall not, however, cancel any contract made in reliance upon this agreement and underway at the time of termination. Any contract underway shall be allowed to conclude on its own terms. The County agrees to bear complete and total legal and financial responsibility for any such agreement.

ARTICLE III. NOTICE & DESIGNATED AGENTS

- A. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise indentured in an addenda:

CITY OF CANTON:

Mayor William Truly, Jr., M.D.
P.O. Box 1605
Canton, Mississippi 39046
Phone: (601) 859-4331
Fax: (601) 859-4379

MADISON COUNTY:

B. All notices given here under shall be by U.S. Certified Mail, return receipt requested, or by facsimile, and shall be effective only upon receipt by the addresses at the above addresses.

ARTICLE IV. OTHER PROVISIONS

Amendment. This Agreement may be amended by the mutual consent of the City and the County and by an agreement entered into and executed by the governing authorities of each.

Miscellaneous. If any provision of this Memorandum of Understanding shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Authority to Contract. Both parties hereto represent that they have authority to enter into this Memorandum of Understanding. This Agreement may be executed in one or more counterparts (facsimile transmission, email or otherwise), each of which shall be an original Agreement, and all of which shall together constitute one Agreement.

Operation of Agreement and the Infrastructure Improvements. Upon completion of the Project, responsibility for maintenance and upkeep shall be the responsibility of the City.

Duration. This Agreement shall be in force and effect until terminated in accordance with the provision as set forth herein. The County will complete all work on the Project no later than August 31, 2020.

Termination. This Agreement shall terminate on January 1, 2021.

So agreed this the _____ day of _____, 20____.

City of Canton, Mississippi

William Truly, Jr., M.D., Mayor
(subject to approval by the Governing Authorities on April 21, 2020)

Attested:

Deputy City Clerk

So agreed this the _____ day of _____, 20_____.

Madison County

President, Board of Supervisors

Attested:

Clerk, Madison County Board of Supervisors

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

COPY

OPINIONS
DIVISION

December 19, 2019

Mrs. Katie Bryant Snell, Esquire
Attorney for the Madison County Board of Supervisors
Post Office Box 3007
Madison, Mississippi 39130-3007

Re: Approval of Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Canton, Mississippi for rebuilding, overlay and striping of roadways

Dear Mrs. Snell: **OFFICIAL OPINION**

Attorney General Jim Hood has received your request to review and approve the above-referenced Interlocal Agreement and has referred it to me for research and reply. As required by Section 17-13-11 of the Mississippi Code Annotated, all interlocal agreements must be approved by the Attorney General before they may go into effect. This agreement involves the rebuilding, overlay and striping of roadways within the City of Canton, Mississippi. Specifically, the road work will be performed on Martin Luther King Jr. Drive.

We have examined the agreement pursuant to the Interlocal Cooperation Act of 1974, Sections 17-13-1 *et seq.* and find that the agreement is in proper form and in compliance with the laws of the State of Mississippi and is hereby approved. We should note the agreement must have been approved by resolution on the minutes of the governing authorities who are parties to the agreement. With respect to the effect of the agreement on successor boards as it relates to the duration of the agreement, this office has consistently opined that contracts or agreements extending beyond the term of the current governing body are voidable by the succeeding board. Please also note that the Board must ensure compliance with Section 19-11-27 regarding any expenditures for road and bridge construction, maintenance and equipment.

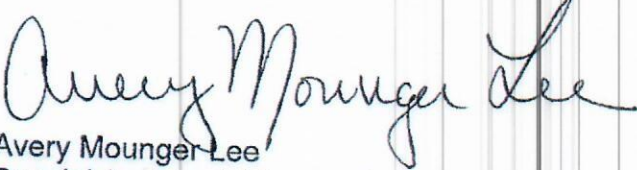
Prior to becoming effective, the agreement must, in addition to receiving the

Mrs. Katie Bryant Snell, Esq.
December 19, 2019
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approval of this office, be filed with the chancery clerk of Madison County and with the Secretary of State. Please note that any amendments to the agreement must also be approved by this office.

If our office may be of further assistance, please advise.

Sincerely,


Avery Mounger Lee
Special Assistant Attorney General

Enclosure

OFFICIAL OPINION

**INTERLOCAL COOPERATION AGREEMENT BETWEEN MADISON COUNTY,
MISSISSIPPI AND THE CITY OF CANTON, MISSISSIPPI REGARDING
THE FUNDING OF CERTAIN IMPROVEMENTS
TO MARTIN LUTHER KING JR. DRIVE**

This Interlocal Cooperation Agreement (the "Agreement") is made and entered into by and between the City of Canton, Mississippi, a municipal corporation organized and existing under the laws of the State of Mississippi (the "City"), and Madison County, Mississippi, a political subdivision of the State of Mississippi (the "County"), pursuant to the Mississippi Interlocal Cooperation Act of 1974, codified at Section 17-13-1, et seq., Mississippi Code of 1972, as amended (the "Interlocal Act"), on the date set forth hereinafter.

RECITALS:

WHEREAS, the City and County agree, find and determine as follows:

1. In addition to any words and terms elsewhere defined herein, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

"City" shall mean the City of Canton, Mississippi.

"County" shall mean Madison County, Mississippi.

"Project" shall mean the rebuilding, overlay, and striping of Martin Luther King Jr. Drive in the City of Canton to the extent that the funds described herein may allow the work to be done, using construction methods and materials which, in the judgment of the City, will produce the best result given the funding available.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words and terms herein defined shall be equally applicable to the plural as well as the singular form of any of such words and terms.

2. The governing authorities of the City and the County desire to enter into a joint effort to make the most efficient use of their powers and enable them to enhance the general welfare of the City and County and the citizens of each through the improvement of streets and related infrastructure.

3. This Agreement will terminate on January 1, 2021.

4. In order to provide for the infrastructure improvements, it is necessary and in the public interest for the City to cooperate with the County by entering into this Agreement.

5. The City and the County desire to enter into this Agreement for the purposes of street repair and resurfacing which will enhance the general welfare of the City and the County and the citizens of each, and, consequently, the economic development of the City and the County.

6. It is necessary for the City and the County to enter into this Agreement in order to enable the City to proceed with the Project with a clear understanding and commitment as to the nature of the County's participation.

7. The City agrees to assume the work necessary to undertake the project. The County agrees to reimburse the City for expenses associated with this project up to a maximum of One Hundred and Ninety Thousand Dollars (\$190,000.00).

8. It is in the best interests of the citizens of the City that the City enter into and execute the Agreement.

9. It is in the best interests of the citizens of the County that the County enter into and execute the Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE ABOVE AND THE MUTUAL BENEFITS ACCRUING TO THE CITY AND THE COUNTY, THE CITY AND THE COUNTY DO HEREBY AGREE AS FOLLOWS:

SECTION 1. Duration. This Agreement shall be in force and effect until terminated in accordance with the provisions of Section 6 hereof.

SECTION 2. Purpose. The purpose of this Agreement is to define the respective responsibilities of the City and the County with regard to the financing and completion of the Project, as defined above.

SECTION 3. Organization; Statutory Authority. There will be no separate legal or administrative entity created pursuant to this Agreement. The City is authorized by Miss. Code Section 21-37-3 and County is authorized by Miss. Code Section 19-3-41 to exercise and carry out the powers, authorities, and responsibilities to be exercised by each of them pursuant to the terms of this Agreement.

SECTION 4. Financing, Staffing and Supplying. The Project will be undertaken and financed by the City, and upon completion, the City will thereafter assume responsibility for maintenance and upkeep of the streets. The County will reimburse the City for work done during the course of the Project on a monthly basis, not later than thirty days after delivery by the City of documentation of costs incurred. The County will reimburse the City the costs incurred in the performance of work necessary to accomplish the Project, up to a maximum contribution by the County of One Hundred and Ninety Thousand Dollars (\$190,000.00). Any additional costs incurred will be the responsibility of the City and will not be reimbursed by the County. The City will perform the work primarily through the use of contractors, with some possible incidental work being performed by City personnel and equipment. The City will complete work on the project not later than August 31, 2020, with a final invoice to the County submitted not later than October 31, 2020, and payment made as set forth above. Any portion of the project not completed and invoiced within this time frame will not be eligible for reimbursement of the County share of the project.

SECTION 5. Operation of Agreement and the Infrastructure Improvements. Upon completion of the Project, responsibility for maintenance and upkeep will be the responsibility of the City.

SECTION 6. Termination; Disposition of Property. This Agreement will terminate on January 1, 2021. At the termination of the Agreement any property owned by the City and County, respectively, shall remain their property. The finished Project shall be dedicated to the City. Due to the nature of the agreement, there will be no surplus funds or property to be disposed of when the project is complete.

SECTION 7. Amendment. This Agreement may be amended at any time by the mutual consent of the City and the County by an agreement entered into pursuant to the provisions of the Interlocal Act.

SECTION 8. Manner of Acquiring, Holding and Disposing of Property; Cooperation Concerning Property Matters. The City has acquired or will acquire all property needed for the Project.

SECTION 9. Effective Date. This Agreement will be effective when it is approved by the respective governing bodies of the City and the County and by the Mississippi Attorney General. The initial term of this Agreement shall commence on the effective date hereof and extend through completion of the Project.

WITNESS the signatures of the duly authorized officers of the City and the County as of the _____ day of _____, 2019.

CITY OF CANTON, MISSISSIPPI

By: _____
Mayor

ATTEST:

City Clerk

(SEAL)

MADISON COUNTY, MISSISSIPPI

By: _____
President, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

(SEAL)