

Mark C. McConnell
Deputy Executive Director/
Chief Engineer

Charles R. Carr
Director
Office of Intermodal Planning



Lisa M. Hancock
Deputy Executive Director/
Administration

Willie Huff
Director
Office of Enforcement

Melinda L. McGrath
Executive Director

P. O. Box 1850 / Jackson, MS 39215-1850 / Telephone (601) 359-7001 / FAX (601) 359-7110 / GoMDOT.com

October 17, 2014

Mr. Mark Houston
County Administrator
125 W. North Street
Canton, MS 39046

Re: Memorandum of Understanding
STP-0045-00(024) LPA/106482-711000, Madison County

Dear **M**r. Houston,

Please find the enclosed Memorandum of Understanding (MOU) document (3 originals). Please sign and return **all three originals** to my office for further processing.

If you have any questions or require additional information, please contact me at your earliest convenience.

Respectfully,

Jeffrey C. Altman
State Engineer for Local Public Agency
MDOT

cc: Project File,



Memorandum of Understanding

LOCAL PUBLIC AGENCY CONTRACTS MADISON COUNTY, MISSISSIPPI

This Agreement is made between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (hereinafter referred to as the "COMMISSION"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation ("MDOT") and Madison County, Mississippi (hereinafter referred to as the "LPA"), for the purpose of establishing the agreed conditions under which the LPA may utilize a maximum of Six Million Dollars (\$6,000,000) in combined state and federal funding to complete certain proposed projects, effective as of the date of the last execution below.

WHEREAS, the LPA has announced its intentions to conduct certain projects within its borders, described more fully in Attachment A to this Agreement, which is attached hereto and made a part hereof as if copied in words and figures, hereinafter referred to collectively as the "PROJECT;" and

WHEREAS, the parties to this Memorandum of Understanding earlier entered into a Settlement Agreement to resolve certain litigation, in which the COMMISSION agreed to provide the sum of Six Million Dollars (\$6,000,000) to be utilized by the LPA for the PROJECT. The above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the LPA agrees that if funds from the Federal Highway Administration (FHWA) are utilized that the LPA will be bound by, and will comply with, any and all federal requirements and the MDOT operating procedures, even though the federal requirements, when coupled with MDOT procedures, specify that no retainage is to be withheld; and

WHEREAS, the LPA will be responsible for all PROJECT cost over and above the Six Million Dollars (\$6,000,000) allocated to the PROJECT by the COMMISSION; and

WHEREAS, the COMMISSION is hereby consenting to allow the LPA to manage the PROJECT under the terms and provisions of this Memorandum of Understanding; and

WHEREAS, the COMMISSION and the LPA desire to set forth more fully the understanding of the parties with respect to the process by which this will be accomplished, and this document supersedes all other agreements unless herein specified.

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the COMMISSION mutually enter into the following Memorandum of Understanding for these and any future funds that may be allocated to this PROJECT.

ARTICLE I. DUTIES AND RESPONSIBILITIES

A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, will:

1. Designate a full time employee of the LPA as the Project Director, who will serve as the person of responsible charge for the PROJECT and will coordinate all PROJECT activities with the MDOT District LPA Coordinator.
2. Follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies necessary for the PROJECT including, but not limited to, project activation, consultant selection, request and/or develop and follow all necessary permits, environmental process, preliminary design, Right of Way acquisition (if required), advertisement for and selection of a contractor, construction oversight, and project close out.
3. Submit to the MDOT four (4) complete sets of "as-built" plans in printed form and the original electronic files in a format that is compatible with Microstation prior to MDOT acceptance. Upon request, MDOT may waive this requirement for selected projects.
4. Be responsible for all maintenance of the PROJECT during and after completion.
5. Agree to be bound by any and all federal requirements and the MDOT operating procedures, even though the federal requirements, when coupled with MDOT procedures, specify that no retainage is to be withheld.
6. Agree that if any act of omission or commission on the part of the LPA causes loss of federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA will be solely responsible for all additional costs.
7. Promptly pay any consultants or contractors monies due them within 45 days of submittal of invoice from the consultant or contractor. MDOT reserves the right to withhold reimbursement until adequate proof of payment has been produced should the above not be followed.
8. All contracts and subcontracts shall include a provision for compliance with The Mississippi Employment Protection Act, as published in the General Laws of 2008 and codified in the Mississippi Code of 1972, as amended (Sections 71-11-1 and 71-11-3), and any rules or regulations promulgated by the COMMISSION, the Department of Employment Security, the State Tax Commission, the Secretary of State, or the Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1, et seq., Mississippi Code of 1972, as amended) regarding compliance with the Act. Under this Act, the LPA and every sub-recipient or subcontractor shall register with and participate in a federal work authorization program operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208., Division C, Section 403(a); 8 USC, Section 1324a.

9. The LPA will be required to acknowledge the MDOT and the FHWA for their participation in the project in any news releases or other promotional material for the PROJECT. The PROJECT sponsor shall notify the MDOT LPA Division of any ceremonies related to the PROJECT.

10. In the event right-of-way acquisition for, or actual construction of, the road for which any preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the fiscal year in which the preliminary engineering project is obligated, the LPA may be required to repay to the FHWA the sum or sums of Federal funds reimbursed to the LPA for this preliminary engineering work; and (2) in the event that right-of-way acquisition is started by the close of the tenth federal fiscal year, but construction is not started by the close of the twentieth federal fiscal year following the fiscal year in which this preliminary engineering project is obligated, the LPA may be required to repay to the FHWA the sum or sums of federal funds reimbursed to the LPA for this preliminary engineering work and right-of-way acquisition.

11. The LPA will be required to submit to the District LPA Coordinator monthly progress reports through the Notice to Proceed for construction, which shall include, but not be limited to, the work which has been completed that month and the planned work for the upcoming month. The LPA will also provide a project progress schedule which will report project milestones and the target date for the LPA's request for Ad Authority. These project milestones are to be updated once any milestones are missed.

12. The LPA agrees that any project that uses federal funds shall be properly maintained at all times. If such required maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency.

B. THE COMMISSION WILL:

1. Provide the sum of Six Million Dollars (\$6,000,000) in funds from various sources to the LPA to utilize toward construction of the PROJECT.

2. Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with COMMISSION and FHWA approval and that all costs of the improvements that exceed the amount hereby contributed are borne by the LPA.

3. Enter into cooperative agreements or permits necessary to allow the LPA access to the property of the COMMISSION for the purposes of constructing the proposed transportation improvements.

4. Work with the LPA, through the District LPA Coordinator, during the various phases of the work with the goal of producing a finished product that will be acceptable to the COMMISSION upon completion.

5. Review all submittals in a timely manner, in accordance with the PDM, to allow the project to progress in an orderly fashion.

6. During the progress of the PROJECT, assist the LPA in obtaining reimbursements of federal funding for any phase that is eligible for reimbursement. All costs associated with this process, and any other involvement by the MDOT staff in this PROJECT, will be charged as a project cost.

7. Submit all documents to FHWA when required or requested by FHWA.

ARTICLE II. GENERAL PROVISIONS

A. Should the LPA fail to complete the construction of the proposed transportation improvements as contemplated by this agreement after construction is commenced, the LPA agrees that it will bear all costs of completion over and above the funds supplied by MDOT. The COMMISSION shall have the right to audit all accounts associated with the PROJECT, and should there be any overpayment by the COMMISSION to the LPA, the LPA agrees to refund any such overpayment within 30 days of written notification. Should the LPA fail to reimburse the COMMISSION, the COMMISSION shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.

B. 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 under its own terms. The LPA agrees to bear complete and total legal and financial responsibility for any such agreement. Additionally, funds may be suspended/terminated under the provisions of Section E, below.

C. It is understood that this is a Memorandum of Understanding and that more specific requirements for the conduct of the design of the transportation improvement project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the Standard Operating Procedures for MDOT, and other related regulatory authorities. The LPA agrees that it will abide by all such applicable authority.

D. In the event that any act of omission or commission on the part of the LPA causes loss of federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, *et seq.* or any other provision of law, the LPA shall be solely responsible for all additional costs.

E. The Executive Director of MDOT may withhold funds for the PROJECT for any of the following reasons:

- a. Failure to proceed with the work when so instructed by the MDOT or to adhere to the requirements of the contract.
- b. Failure to perform the work with sufficient workers, equipment and materials to assure completion within contract time.
- c. Performing unacceptable work, or neglecting or refusing to remove materials or to perform any such work as may be rejected as unacceptable.

- d. Discontinuing the prosecution of the work.
- e. Failure to comply with all federal, state and local laws, ordinances, regulations, permits, and all orders and decrees of bodies or tribunal's having jurisdiction or authority which affect those engaged or employed on the work or affect the conduct of the work.
- f. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
- g. Allowing a final judgment to stand unsatisfied.
- h. Making an assignment for the benefit of creditors.
- i. Failure to deal with all storm water issues as defined in the permit and/or PDM.
- j. Failure to properly maintain any project that uses federal funds may cause future federal funds to be withheld for any projects in the jurisdiction of the local agency.
- k. Failure for any other cause whatsoever to carry on the work in an acceptable manner.

Before federal funds are terminated, the LPA will be notified in writing by the Executive Director of the conditions which make termination of funds imminent. If no effective effort has been made by the LPA, its agents, employees, contractors or subcontractors, to correct the conditions of which complaint is made, within fifteen (15) calendar days after notice is given, the Executive Director may declare the federal funds suspended for the PROJECT and notify the LPA accordingly. The LPA will then have forty-five (45) days in which to correct all conditions of which complaint is made. If all conditions are not corrected within forty-five (45) days, the Executive Director may declare the federal funds for the PROJECT terminated and notify the LPA accordingly. If all conditions are corrected, within the forty-five (45) day period, the LPA will be reimbursed under the terms of this agreement, for all work satisfactorily completed during the forty-five days period.

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 the addenda hereto:

For Contractual Administrative Matters:

COMMISSION:
Executive Director
MDOT
P.O. Box 1850
Jackson, MS 39215-1850
Phone: (601) 359-7002
Fax: (601) 359-7110

LPA:
President, Board of Supervisors
Madison County, Mississippi
125 West North Street
Canton, MS 39046
Phone: 601-855-5500
Fax: 601-859-5875

For Technical Matters:

COMMISSION:
LPA Division
MDOT
401 N. West Street
Jackson, MS 39201
Phone: 601-359-7277
Fax: 601-359-7220

LPA:
{Title of Project Director}
Madison County
{Address}
{Address}
Phone:

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

ARTICLE IV. RELATIONSHIP OF THE PARTIES

A. The relationship of the LPA to the COMMISSION is that of an independent contractor, and said LPA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the COMMISSION by reason hereof. The LPA will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the COMMISSION, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

B. The COMMISSION executes all directives and orders through MDOT. The LPA executes all directives and orders pursuant to applicable law, policies, procedures and regulations. All notices, communications, and correspondence between the COMMISSION and the LPA shall be directed to the designated agent shown above in Article III.

ARTICLE V. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

To the extent permitted by law, the Commission and the LPA agree that neither party nor their agents, employees, contractors or subcontractors, will be held liable for any claim, loss, damage, cost, charge or expenditure arising out of any negligent act, actions, neglect or omission caused solely by the other party, its agents, employees, contractors or subcontractors.

ARTICLE VI. MISCELLANEOUS

No modification of this Memorandum of Understanding shall be binding unless such modification shall be in writing and signed by all parties. 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. If a court finds that any provision of this Memorandum of Understanding is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

ARTICLE VII. 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 but one Agreement.

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

MADISON COUNTY BOARD OF SUPERVISORS

KARL BANKS, PRESIDENT

Attested:

CHANCERY CLERK

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

Melinda L. McGrath, P.E.
Executive Director
Mississippi Department of Transportation

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

Memorandum of Understanding for Local Public Agency Contracts with Madison County, Mississippi, filed at Book _____, Page _____ of the Minutes of the Transportation Commission.

ATTACHMENT A

DESCRIPTION OF THE PROJECT

Road A—Reunion Parkway Phase 2 from MS Highway 463 ROW East 1.72 Miles;

Road B—Highland Colony Parkway northerly 3.5 miles to state maintenance limit south of Old Agency Road;

Road C—Yandell Road from Bainbridge Subdivision from Bainbridge East entrance 1.16 miles.

