CITY OF GAUTIER
MEMORANDUM

To: Samantha Abell, City Manager

From: Patty Huffman, Grants & Projects Manager

Through: Eric Meyer, Economic Development and Planning Director

Date: April 9, 2013

Subject: Approval for MDOT Replacement Memorandum of Understanding for Martin Bluff Road Widening and Improvement Project (STP-9194-00(001)LPA/105069-801000

REQUEST:
The Economic Development and Planning Department requests City Council approval of a Replacement Memorandum of Understanding (MOU) with the Mississippi Department of Transportation for the Martin Bluff Road Widening and Improvement Project.

BACKGROUND:
The City of Gautier signed the original MOU on June 6, 2007 that included approximately $2,400,000.00 in federal funds for the project.

DISCUSSION:
The Replacement MOU includes $4,761,760.00 in federal funds as outlined below:

- $936,000.00 in STP funds at 80% federal match and 20% local match,
- $2,159,760.00 earmark funds at 80% federal match and 20% local match, and
- $1,666,000.00 earmark funds at 100% federal participation.

RECOMMENDATION:
City staff recommends that City Council approve the MDOT Replacement MOU for the Martin Bluff Road Widening and Improvement Project as presented.

City Council may:

1. Approve entering into the Replacement MOU as presented; or
2. Approve the Replacement MOU with changes; or
3. Decline to approve the Replacement MOU.

ATTACHMENT(S):
Replacement Memorandum of Understanding for STP-9194-00(001)LPA/105069-801000

Mark C. McConnell
Deputy Executive Director/
Chief Engineer

Jackie Duckworth
Deputy Executive Director/
Administration

MISSISSIPPI DEPARTMENT OF TRANSPORTATION

Melinda L. McGrath
Executive Director

Tom King
Southern District Commissioner

Kelly R. Castleberry
District 6 Engineer

Albert L. White
District 7 Engineer

P. O. Box 551 / Hattiesburg, Mississippi 39403-0055 / Telephone (601) 544-6511 / FAX (601) 544-0227 / GoMDOT.com

16499-B Highway 49, Saucier, Mississippi 39574-9740

March 28, 2013

Ms. Samantha D. Abell
City Manager, City of Gautier
3330 Highway 90
Gautier, MS 39553

RE: Replacement MOU
Martin Bluff Road
STP-9194-00(001)LPA/105069-801000

Dear Ms. Abell,

Attached are the duplicate copies of the MOU for the above referenced project for your review and processing. The MOU outlines responsibilities and funding as required by the MDOT project development manual, PDM, for federal funding. Please execute the MOU in duplicate and return with governing council or board minutes signifying approval. Please mail to:

Mississippi Department of Transportation
Attn: David Seyfarth
16499-B Highway 49
Saucier, MS 39574-9740

In accordance with the MOU, please remember to include the MDOT in any public relations activities or press release for this project. The MDOT public relations liaison for District VI is Layla Essary, telephone number 601-466-1881.

Should you need additional information, contact my office at 228-832-0682.

Sincerely,

David Seyfarth

David H. Seyfarth, PE, PS
Special Projects Engineer

cc: Project File 16-10 w/ attachments

REPLACEMENT
Memorandum of Understanding

STP-9194-00(001)LPA/105069-801000
Widen and Improve Martin Bluff Road
Gautier, MS

This Replacement Agreement is made between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (The "COMMISSION"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation ("MDOT") and **City of Gautier**, "LPA" (hereinafter referred to as the "LPA"), for the purpose of establishing the agreed conditions under which the LPA may utilize STP and Earmark Funds and subsequent acts to complete the proposed project as described below, effective as of the date of the last execution below.

WHEREAS, the LPA has announced its intentions to widen and impove Martin Bluff Road; (hereinafter referred to as the "PROJECT"); and

WHEREAS, this agreement supersedes any previous agreements for this PROJECT; and

WHEREAS, it is anticipated that approximately $ 4,761,760.00 in federal funds ($ 936,000.00 in STP funds at 80% federal match and 20% local match, $ 2,159,760.00 earmark funds at 80% federal match and 20 % local match, and $1,666,000.00 earmark funds at 100% Federal participation) for the construction of the PROJECT, and the above mentioned federal funds will expire if they are not obligated on or before N/A. The above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the LPA agrees that if funds from 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.

WHEREAS, if this is an Safe Routes To Schools (SRTS) PROJECT approved by the , COMMISSION a maximum of $ N/A for preliminary engineering and construction of the PROJECT approved, and $ N/A for non-infrastructure activities is approved, for a total of $ N/A in SRTS federal funds, which may be available over a period of time and are subject to normal reductions and obligation limitations, and

WHEREAS, the LPA will be responsible for all PROJECT cost over and above the maximum amount of Federal Funds allocated to the PROJECT by the COMMISSION, and

WHEREAS, the MDOT requires the LPA to provide the local share previously stated; 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 federal 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 for Local Public Agencies (PDM) necessary for the PROJECT including, but not limited to, project activation, consultant selection, 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. If this is a Transportation Enhancement (TE) PROJECT then execute a Facilities Ownership and Use Policy that will allow the LPA to maintain and operate or provide for the maintenance and operation of the completed PROJECT. If this is a Transportation Museum or Welcome Center it shall be staffed by the LPA a minimum of forty (40) hours per week. All TE PROJECTS will have a permanently mounted plaque or sign identifying the FHWA and MDOT as providing funding for the PROJECT. No changes will be made to the completed PROJECT that would affect the traffic and/or traffic control on the PROJECT and/or alter the approved definition of the PROJECT as a Transportation Enhancement Project without the prior approval of the MDOT. Acceptable change must be in conformance with current standards and with provisions of the current Manual on

Uniform Traffic Control Devices for Streets and Highways and American Association of State Highway and Transportation Officials (AASHTO). The LPA understands that failure to fulfill this responsibility in regard to maintenance of the PROJECT, its operation or regulation will disqualify the LPA from receiving any Transportation Enhancement Funds until such time as the deficiencies are corrected to the satisfaction of the MDOT and FHWA, and if the deficiencies are not corrected the LPA may be required to reimburse the MDOT for all project cost.

8. If this is a SRTS PROJECT, then all participating communities will be required to participate in the project evaluation which includes data collection using tools developed by the National Center for Safe Routes to School. The tools are the Student Travel Tally and the Parent Survey. These tools will be administered three times - at the beginning of the project (required to complete the application), at the completion of the infrastructure project(s) and one year after. The SRTS coordinator can provide copies of the tallies and surveys as needed and can assist with entering the data for results. Additional evaluation required includes reporting overall changes realized by the community as a result of the Safe Routes to School program.

9. Promptly pay any consultants or contractors monies due them within 30 days of submittal of invoice from the consultant or contractor. MDOT reserves the right to withhold Federal reimbursement until adequate proof of payment has been produced should the above not be followed.

10. If there is any requirement for "matching" funds, or if the anticipated cost of construction will exceed the available Federal-aid funds, the LPA shall be solely responsible for providing said local share or any funds above the Federal-aid funds at such time as the funds may be required.

All contracts and subcontracts shall include a provision for compliance with Senate Bill 2988 from the 2008 Session of the Mississippi Legislature entitled "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 .

11. 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.

12. In the event right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth 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 (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 City for this preliminary engineering work and right-of-way acquisition.

13. 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 progress schedule which will report whether the project is on schedule, behind or ahead and the plans for maintaining the planned schedule.

B. THE COMMISSION WILL:

1. Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with MTC and FHWA approval and that all costs of the improvements that are not covered by federal funds are borne by the LPA.

2. Enter into any 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.

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

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

5. 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.

6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the 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 the FHWA through 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 federal 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 workmen, 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 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:
Melinda L. McGrath
Executive Director
MDOT
P.O. Box 1850
Jackson, MS 39215-1850
Phone: (601) 359-7002
Fax: (601) 359-7110

LPA:
Samantha Abell
City Manager
City of Gautier
3330 Highway 90
Gautier, MS 39553
Phone: (228) 497-8000
Fax: (228) 497-8028

For Technical Matters:

COMMISSION:
David Seyfarth, PE
District LPA Coordinator – District Six
MDOT
16499B Highway 49
Saucier, MS 39574-9740
Phone: (228) 832-0682
Fax: (228) 832-0681

LPA:
Eric Meyer
Dir. of Economic Dev. & Planning
City of Gautier
3330 Highway 90
Gautier, MS 39553
Phone: (228) 497-8488
Fax: (228) 497-8028

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 the 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.

(remainder of this page intentionally blank)

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___.

City of Gautier

_____

Samantha Abell, City Manager

Attested:

_____

(Appropriate clerk etc)

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

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

_____

Melinda L. McGrath, PE
Executive Director
Mississippi Department of Transportation

Book _____, Page _____,