

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Patty Huffman, Grants & Projects Manager
Through: Chandra Nicholson, Economic Development and Planning Director
Date: May 28, 2014
Subject: MDOT Memorandum of Agreement for the I-10/Hwy. 57 Area Feasibility Study

REQUEST:

The Economic Development & Planning Department requests authorization to enter into a Memorandum of Agreement with the Mississippi Transportation Commission for a study of transportation improvements to the north-east quadrant of the intersection of Interstate 10 and Highway 57.

BACKGROUND:

The City of Gautier has requested MDOT to fund a study for the City of Gautier. City Council previously approved a request of \$64,000.00 in federal funds (80% match) and \$16,000.00 in local funds (20% match) to the Gulf Regional Planning Commission (GRPC). GRPC decided the study should be directly between MDOT and the City of Gautier. This agreement will establish the agreed conditions under which the City may utilize Surface Transportation Program funds and the subsequent acts needed to complete the proposed project.

RECOMMENDATION:

Economic Development and Planning staff recommends that City Council authorize entering into the Memorandum of Agreement with the Mississippi Transportation Commission for the I-10/Highway 57 transportation improvements study.

The City Council may:

1. Authorize entering into the Memorandum of Agreement as presented;
2. Authorize entering into the Memorandum of Agreement with changes; or
3. Disapprove entering into the Memorandum of Agreement for this project.

ATTACHMENT(S):

MDOT Memorandum of Agreement for Transportation Improvements Study

**MEMORANDUM OF AGREEMENT
BETWEEN THE MISSISSIPPI TRANSPORTATION COMMISSION
AND THE CITY OF GAUTIER, MISSISSIPPI
FOR A STUDY OF TRANSPORTATION IMPROVEMENTS TO THE
NORTH – EAST QUADRANT OF THE INTERSECTION OF
INTERSTATE 10 AND HIGHWAY 57**

This Agreement (the “Agreement”) is entered into by the Mississippi Transportation Commission (“the Commission”), a body corporate of the State of Mississippi, acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation (“MDOT”), and the City of Gautier, Mississippi (the Local Public Agency or the “LPA”), a municipal corporation of the State of Mississippi, by authority granted under the provisions of Miss. Code Ann. (1972) Sections 65-1-8, as amended, for the purpose of establishing the agreed conditions under which the LPA may utilize Surface Transportation Program funds and subsequent acts to complete the proposed Project as described below, effective as of the date of last execution.

WHEREAS, the LPA has announced its intentions to perform a feasibility study of the North – East Quadrant of I-10 and SR 57 in Gautier, Jackson County, Mississippi to determine what improvements could be made to provide a catalyst for economic development (hereafter referred to as the “Project”); and

WHEREAS, the Commission and the LPA have agreed that the LPA will conduct the Project; and

WHEREAS, the LPA has received a commitment of certain Surface Transportation Program funds from the United States of America to apply toward performing the study, which funds are to be provided from FHWA, under the rules and exclusions which typically apply to FHWA funding; and

WHEREAS, it is anticipated that approximately \$64,000.00 in federal funds (80% match) and \$16,000.00 in local funds (20% match) will be available for the Project. The above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the LPA will be responsible for all Project costs 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 state share previously stated; and

WHEREAS, the LPA agrees that it will be bound by, and will comply with, any and all federal requirements and the MDOT operating procedures; and

WHEREAS, the Commission hereby consents to allow the LPA to manage the Project under the terms and provisions of this Memorandum of Agreement; and

WHEREAS, the LPA has funds available, or will have funds available, to complete the Project; and

WHEREAS, the Commission and the LPA desire to work in coordination and cooperation with each other in a government-to-government relationship for the benefit of both parties; and

WHEREAS, the Commission and the LPA desire to enter into an agreement setting out their mutual obligations, through which the proposed Project can be accomplished in the most expeditious manner possible; and

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the Commission and the LPA, mutually agree to the following:

ARTICLE I: DUTIES AND RESPONSIBILITIES

A. THE LPA 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 Planning Division's designated project manager.
2. Follow the procedures set out in the latest online version of the Project Development Manual for Local Public Agencies (PDM) to the extent they are applicable to the Project. This shall include, but not necessarily be limited to, the use of the latest version of the LPA Consultant Operating Procedures for Professional Services.
3. Agree to be bound by any and all federal requirements and the MDOT operating procedures.
4. 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.
5. If there is any requirement for "matching" funds, or if the anticipated cost of the Project will exceed the available Federal-aid funds, the LPA shall be solely responsible for providing said local share at such time as the funds may be required.
6. 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).

7. 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 Project Manager of any ceremonies related to the Project.
8. Promptly pay any consultants monies due them within 30 days of submittal of invoice from the consultant or contractor.
9. Allow the Commission to, without any notice, obligation or further compensation to the LPA, publish, re-publish, anthologize, use, disseminate, license, or sell the work in any format or medium now known or hereafter invented or devised. The Commission's rights shall include, without limitation, the rights to publish, re-publish, or license a third party to publish, re-publish, or sell the work in print, on the World Wide Web, or in any other electronic or digital format or database now known or hereafter invented or devised, as a separate isolated work or as part of a compilation or other collective work, including a work different in form from the first publication, and to include or license a third party to include the work in an electronic or digital database or any other medium or format now known or hereafter invented or devised.

B. THE COMMISSION WILL:

1. Allow the LPA to conduct the Project provided that the Project meets with MTC and FHWA approval and that all costs of the Project 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 conducting the Project.
3. Work with the LPA, through the Planning Division's designated project manager, 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 feasibility study as contemplated by this agreement, 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. It is understood by all Parties that regardless of the results of the feasibility study, the Commission has no responsibility or obligations as a result of the study.
- C. This Memorandum of Agreement 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.
- D. It is understood that this is a Memorandum of Agreement 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.
- E. 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.
- F. The Executive Director of MDOT may withhold federal funds for the Project for any of the following reasons:
 - 1. Failure to proceed with the work when so instructed by the MDOT or to adhere to the requirements of the contract.
 - 2. Failure to perform the work with sufficient workmen, equipment and materials to assure completion within contract time.
 - 3. Performing unacceptable work, or neglecting to perform any such work as may be rejected as unacceptable.
 - 4. Discontinuing the prosecution of the work.

5. 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.
6. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
7. Allowing a final judgment to stand unsatisfied.
8. Making an assignment for the benefit of creditors.
9. Failure for any other cause whatsoever to carry out 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
 Telephone: (601) 359-7002
 Facsimile: (601) 359-7110

LPA:
 Samantha D. Abell
 City Manager
 City of Gautier
 3330 U.S. 90
 Gautier, MS
 Telephone: (228) 497-8000
 Facsimile: (228) 497-8028

Legal Division
 Special Assistant Attorney General
 Chief Counsel Roy M. Tipton
 P. O. Box 1850
 Jackson, MS 39215-1850

Telephone: (601) 359-7600
Facsimile: (601) 359-7774

For Technical Matters:

COMMISSION:
Sammy Holcomb
Planning Analysis Manager – Planning Division
MDOT Administration Building
P. O. Box 1850
401 North West Street
Jackson, MS 39201
Phone: 601-359-7685
Facsimile: 601-359-7652

LPA:
Chandra Nicholson, P.E.
City of Gautier
3330 U.S. 90
Gautier, MS
Telephone: (228) 497-8000
Facsimile: (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.

ARTICLE VII. AUTHORITY TO CONTRACT

Both parties hereto represent that they have authority to enter into this Memorandum of Understanding.

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

City of Gautier, Mississippi
By and through the City Manager

Samantha D. Abell, City Manager

ATTEST:

City Clerk

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

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

Melinda L. McGrath
Executive Director
Mississippi Department of Transportation

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