

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: April Havens, Grants and Projects Manager
Through: Chandra Nicholson, Director of Economic Development and Planning
Date: December 29, 2015
Subject: Replacement MOU with the Mississippi Department of Transportation for 2013 Safe Routes to School Grant Funds

REQUEST:

The Economic Development and Planning Department requests City Council approve the replacement MOU with the Mississippi Department of Transportation for the 2013 Safe Routes to School funding.

BACKGROUND:

The Safe Routes to School Program was established as a response to the reduced number of children walking and bicycling to school. This change in the mode of transportation has added to traffic congestion, reduced air quality, and contributed to the decline in children's health. The purpose of this grant funding is

- to enable and encourage children, including those with disabilities, to walk and bicycle to school;
- to make bicycling and walking to school a safer and more appealing alternative; and
- to facilitate the planning, development and implementation of projects and activities that will improve safety; and reduce traffic, fuel consumption and air pollution in the vicinity of schools.

A grant totaling \$206,000 was awarded for infrastructure improvements and activities designed to encourage and enable children to walk and bicycle safely to College Park Elementary School. School officials estimate that approximately 100 children walk or ride bikes to that school on a daily basis. The grant requires a 20 percent local match, with Jackson County providing \$15,000 of the local match.

DISCUSSION:

This replacement MOU extends the grant deadline to June 30, 2016 to allow time for the Construction Phase of the project to be obligated.

RECOMMENDATION:

The Economic Development and Planning Department staff recommends that City Council approve the replacement MOU with the Mississippi Department of Transportation for the 2013 Safe Routes to School funding to extend the deadline to June 30, 2016.

City Council may:

1. Approve the replacement MOU with the Mississippi Department of Transportation as described above; or
2. Not approve the replacement MOU with the Mississippi Department of Transportation and lose the funding.

ATTACHMENT(S):

Replacement MOU

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

16499-B Highway 49, Saucier, Mississippi 39574-9740
December 17, 2015

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

RE: Memorandum of Understanding, MOU
College Park Elementary Safe Routes to School Project

Dear Ms. Abell,

Attached are the duplicate copies of the replacement Memorandum of Understanding, MOU, for the above referenced project for your review and processing. The updated MOU is being provided to update the obligation date. 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 H. Seyfarth, PE, PS
Special Projects Engineer

cc: Project File 16-10 w/ attachments

REPLACEMENT
Memorandum of Understanding

SRSP-0494-00(010)LPA/106702-401000
College Park Elementary Safe Routes to School Project
Gautier, MS

This Replacement 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 City of Gautier, Local Public Agency "LPA" (hereinafter referred to as the "LPA"), for the purpose of establishing the conditions under which the LPA may utilize SRSP Funds and subsequent acts required to complete the proposed project as described below, effective as of the date of the last execution by the Commission.

WHEREAS, the LPA has announced its intentions to make pedestrian improvements including, but not limited to, sidewalk and pavement markings leading to College Park Elementary School; (hereinafter referred to as the "PROJECT"); and

WHEREAS, it is anticipated that approximately \$ 206,000.00 in federal funds (80% federal match and 20% local match) are available for the construction of the PROJECT, and the above mentioned federal funds will expire if they are not obligated on or before June 30, 2016. The above funds are subject to normal reductions and obligational 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 the MDOT requires the LPA to provide the local share (local match) 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 related to the above-described PROJECT 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 enter into this Memorandum of Understanding for these and any future federal funds that may be allocated to this PROJECT, and agree and covenant as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:

1. The LPA shall immediately 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. The LPA shall follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are 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, advertisement for and selection of a contractor, construction oversight, and project close out.
3. The LPA shall 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. The LPA shall be responsible for all maintenance and operation of the PROJECT during and after completion so that the federal investment in the PROJECT is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of project funds through all available legal actions.
5. The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.
6. The LPA agrees 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. In compliance with State Law, the LPA shall pay all payments owed to Contractors and Consultants according to the terms of the contract, and in all instances payments shall be made within forty-five (45) days from the day they were due and payable. MDOT reserves the right to withhold Federal reimbursement until adequate proof of payment has been produced by the LPA.
8. The LPA shall be solely responsible for payment of any and all funds required to complete the PROJECT, over and above the available federal aid funds for the PROJECT.

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9. 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.

10. The LPA will be required to acknowledge MDOT and FHWA in all public relations efforts for a project including press releases; materials for groundbreaking, ribbon cuttings or other public events; and any other public information or media resources by notifying the MDOT Public Affairs Division, 601-359-7074, comments@mdot.ms.gov. At a minimum, the following example sentence should be included:

"This project was funded by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this project.

11. 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 MDOT 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 MDOT the sum or sums of Federal funds reimbursed to the City for this preliminary engineering work and right-of-way acquisition.

12. 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.

13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.

14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.

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 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, may 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 F.

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. Should the LPA miss the obligation deadline set in this MOU, MDOT reserves the right to obligate funds for the project as obligation authority becomes available, and may not authorize the obligation of those funds until after the obligation of other projects that are set to meet their individual deadlines

E. 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 or refusing to remove materials or 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 to deal with all storm water issues as defined in the permit and/or PDM.
10. 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.
11. Failure for any other cause whatsoever to carry on the work in an acceptable manner.

F. It is understood that obligation authority is uncertain and should MDOT or the MPO exceed its obligation authority for the year, the LPA understands that it be may be required to move the project to another fiscal year for the funds to be obligated.

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.

G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the PROJECT, then MDOT time may be charged to the PROJECT. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the PROJECT may increase.

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
District LPA Coordinator – District VI
MDOT
16499 Highway 49
Saucier, MS 39574-9740
Phone: (228) 832-0682
Fax: (601) 832-0681
Phone: (228) 832-0682

LPA:
Chandra Nicholson
Director of Economic Dev. & Planning
City of Gautier
3330 Highway 90
Gautier, MS 39553
Phone: (228) 497-1878
Fax: (228) 497-1038
Phone: (228) 826-2547

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.

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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 _____,

REPLACEMENT
Memorandum of Understanding

SRSP-0494-00(010)LPA/106702-401000
College Park Elementary Safe Routes to School Project
Gautier, MS

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WHEREAS, the LPA has announced its intentions to make pedestrian improvements including, but not limited to, sidewalk and pavement markings leading to College Park Elementary School; (hereinafter referred to as the "PROJECT"); and

WHEREAS, it is anticipated that approximately \$ 206,000.00 in federal funds (80% federal match and 20% local match) are available for the construction of the PROJECT, and the above mentioned federal funds will expire if they are not obligated on or before June 30, 2016. The above funds are subject to normal reductions and obligational 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 the MDOT requires the LPA to provide the local share (local match) 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 related to the above-described PROJECT 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 enter into this Memorandum of Understanding for these and any future federal funds that may be allocated to this PROJECT, and agree and covenant as follows:

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A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:

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2. The LPA shall follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are 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, advertisement for and selection of a contractor, construction oversight, and project close out.
3. The LPA shall 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. The LPA shall be responsible for all maintenance and operation of the PROJECT during and after completion so that the federal investment in the PROJECT is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of project funds through all available legal actions.
5. The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.
6. The LPA agrees 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.
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8. The LPA shall be solely responsible for payment of any and all funds required to complete the PROJECT, over and above the available federal aid funds for the PROJECT.

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9. 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.

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"This project was funded by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this project.

11. 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 MDOT 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 MDOT the sum or sums of Federal funds reimbursed to the City for this preliminary engineering work and right-of-way acquisition.

12. 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.

13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.

14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.

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 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, may 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 F.

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. Should the LPA miss the obligation deadline set in this MOU, MDOT reserves the right to obligate funds for the project as obligation authority becomes available, and may not authorize the obligation of those funds until after the obligation of other projects that are set to meet their individual deadlines

E. 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 or refusing to remove materials or 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 to deal with all storm water issues as defined in the permit and/or PDM.
10. 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.
11. Failure for any other cause whatsoever to carry on the work in an acceptable manner.

F. It is understood that obligation authority is uncertain and should MDOT or the MPO exceed its obligation authority for the year, the LPA understands that it be may be required to move the project to another fiscal year for the funds to be obligated.

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.

G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the PROJECT, then MDOT time may be charged to the PROJECT. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the PROJECT may increase.

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
District LPA Coordinator – District VI
MDOT
16499 Highway 49
Saucier, MS 39574-9740
Phone: (228) 832-0682
Fax: (601) 832-0681
Phone: (228) 832-0682

LPA:
Chandra Nicholson
Director of Economic Dev. & Planning
City of Gautier
3330 Highway 90
Gautier, MS 39553
Phone: (228) 497-1878
Fax: (228) 497-1038
Phone: (228) 826-2547

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 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 _____,