

MEMORANDUM OF AGREEMENT

STP-0045-00(033)LPA 108875-711000
City of Diamondhead Wayfinding Study
City of Diamondhead

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 the City of Diamondhead (hereinafter referred to as the “LPA”), for the purpose of establishing the terms under which the LPA may utilize federal funds to complete the proposed project as described below, effective as of the date of the last execution by the Commission.

WHEREAS, the Commission has oversight responsibility and authority over funds that are available for local public agency projects to conduct and contract for transportation planning studies; and

WHEREAS, the LPA has the need for a planning study and has made proper application to develop a wayfinding study; (hereinafter referred to as the “Project”), and the Commission intends to allow the LPA access to available federal funds and to manage the Project under the terms and provisions of this Memorandum of Agreement; and

WHEREAS, it is anticipated that approximately \$73,500 in public funds with \$58,800 in federal funds and \$14,700 local funds (80% grant match and 20% local match) are available for the funding of the Project and that the above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the parties acknowledge that this Agreement is for the purpose of funding and administering a transportation planning study; that any construction project will be the subject of a separate agreement; and

WHEREAS, the Commission and the LPA desire to set forth, by this Agreement, more fully, the agreements of the parties by which the Project will be developed and completed; and

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 Agreement to provide for the use of the currently available federal funds and any future federal funds that may be allocated to this Project, 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 Project Director, who will serve as the person responsible for completion of all phases of the Project and will coordinate all Project activities with the MDOT Planning LPA Coordinator.
 2. 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.
 3. 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.
 4. If required by MDOT, the LPA will submit to the Planning LPA Coordinator progress reports for work that has been completed.
 5. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards to prevent fraud and overpayments. 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.
 6. The LPA agrees that the 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.
 7. The LPA, being classified as a lower tier participant in federal funding, certifies, by execution of this agreement, that neither it nor those individuals or entities with which it contracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- B. The Commission will perform the following duties and responsibilities:
1. Allow the LPA to conduct the studies of the Project provided that the study parameters meet with MTC and FHWA approval.

2. Approve proper permit applications that meet with MDOT standards that are necessary to allow the LPA access to the property of the Commission for the purposes of conducting the study. The Commission may enter into an appropriate agreement in its discretion.
3. Work with the LPA, through the Planning LPA Coordinator, during the various phases of the work with the goal of producing studies and reports that will be acceptable to the Commission upon completion.
4. Review all submittals in a timely manner, 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 project cost that is eligible for reimbursement.
6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.

ARTICLE II. GENERAL PROVISIONS

- A. 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 thirty (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 Agreement shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice given by the LPA, shall not, however, cancel any contract made by the LPA that is to further the purpose of this agreement and that is underway at the time of termination.
- C. It is understood that this is a Memorandum of Agreement and that more specific guidelines for conducting a transportation study may be 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 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:

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

LPA:

Michael Reso
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626
Fax: (228) 222-4390

For Technical Matters:

COMMISSION:

Planning LPA Coordinator
MDOT
401 N. West Street
Jackson, MS 39201
Phone: (601) 359-7685
Fax: (601) 359-7652

LPA:

Michael Reso
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626
Fax: (228) 222-4390

- 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 Agreement shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Agreement 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 Agreement 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 Agreement.

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 Diamondhead

Nancy Depreo, Mayor

Attested:

(Jeannie Klein, City Clerk)

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

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

Brad White
Executive Director
Mississippi Department of Transportation

Book _____, Page _____