

**MISSISSIPPI TRANSPORTATION COMMISSION
MULTI-MODAL FUNDING AGREEMENT
Project No. MM-0070-1225
Tupelo Regional Airport**

This AGREEMENT is made and entered into by and between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (hereinafter referred to as "COMMISSION"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation (hereinafter "MDOT"), and **City of Tupelo and Tupelo Airport Authority** ("RECIPIENT," jointly referred to as "PARTIES"), effective as of the date of the last execution below.

WHEREAS, Section 65-1-701 et seq., Miss. Code Ann. (1972) as amended, authorizes the COMMISSION, subject to the limitations and conditions stated therein, to render financial aid for the development and improvement of transportation projects; and

WHEREAS, the RECIPIENT has submitted an application for Federal and/or State MULTI-MODAL Funds (hereinafter "APPLICATION") to the COMMISSION for financial assistance to be expended by or on behalf of the RECIPIENT in support of a project consisting of the following:

Paid Parking System

Amount: **\$55,000.00**

hereinafter referred to as the "PROJECT," a brief description together with special provisions of which is incorporated herein and made part of this AGREEMENT as Attachment "A."

Such PROJECT may be more fully described in the APPLICATION, capital replacement plan, budget/estimate and/or approved Federal/State grant on file in the offices of the Mississippi Department of Transportation, which, as applicable, are incorporated herein by reference; and

WHEREAS, the COMMISSION has agreed to partially fund such PROJECT with State and/or Federal funds, said PROJECT having been first approved by the Airport MULTI-MODAL Committee;

NOW, THEREFORE, in furtherance thereof, the parties hereto do agree as follows:

SECTION I Responsibilities of the Parties

As a condition of this AGREEMENT and as consideration for same, the RECIPIENT agrees to the following terms and conditions:

- A. The RECIPIENT will expend an amount equal to the amount shown in the APPLICATION as the RECIPIENT's share of the PROJECT, unless a lesser amount is subsequently approved by the COMMISSION.
- B. The RECIPIENT will carry out and complete the PROJECT in accordance with the approved APPLICATION, budget/estimate, plans, specifications, or contracts

for the transportation PROJECT, incorporated herein by reference, and any revisions or modifications approved by the COMMISSION.

- C. The RECIPIENT will provide the COMMISSION with reports in a format and schedule as may be requested by the COMMISSION for accomplishing the PROJECT. Failure to accomplish the PROJECT in a timely manner may be considered as the basis for the COMMISSION to cancel this award and withdraw these funds.
- D. The RECIPIENT will ensure that all funds awarded through this AGREEMENT are expended in accordance with all Federal/State cost principles as well as Federal and State procurement laws, regulations, or other program guidance as applicable.
- E. The RECIPIENT will at all times comply with all applicable Federal and State regulations, policies, procedures and directives, including the applicable Certifications and Assurances to be executed by the RECIPIENT as a part of grant awards and/or other agreements with the COMMISSION that relate to this PROJECT.
- F. The RECIPIENT will establish and maintain financial records of the PROJECT in accordance with applicable Federal and/or State audit requirements and make them available to personnel of the COMMISSION upon request.
- G. The RECIPIENT will operate and maintain in a safe and serviceable condition, all real, personal, and/or mixed property, including but not limited to vehicles and equipment (hereinafter, as combined, to be referred to as "PROJECT PROPERTY") that is purchased or improved in whole or in part with funds provided by this AGREEMENT.
- H. The RECIPIENT will grant and does hereby grant to the COMMISSION the right and opportunity to inspect any PROJECT PROPERTY financed in whole or in part by this AGREEMENT, to audit any records connected to this PROJECT, and to review the RECIPIENT's processes, procedures, and use of said property.
- I. The RECIPIENT will dispose of all PROJECT PROPERTY financed in whole or in part by this AGREEMENT in accordance with the applicable property management and disposition policies and procedures as determined by the COMMISSION.
- J. The RECIPIENT will dispose of all proceeds resulting from the sale of any PROJECT PROPERTY financed in whole or in part by this AGREEMENT in accordance with written guidance from the COMMISSION.

The COMMISSION in discharge of its responsibilities hereunder agrees to reimburse the RECIPIENT an amount up to \$55,000.00 as the COMMISSION's share from the State MULTI-MODAL Transportation Improvement Fund, and/or other available State or Federal funds as may be appropriate for expenses incurred in accomplishing the PROJECT.

SECTION II Purchase of Property, Goods, or Services

The purchase of all PROJECT PROPERTY, and/or goods and services, financed in whole or in part pursuant to this AGREEMENT shall be in accordance with the applicable Federal and State laws and procurement regulations, including State competitive bidding procedures.

The MDOT, after conferring with the appropriate Federal agency, may impose additional specific requirements governing the acquisition, use, or disposition of PROPERTY purchased with Federal funds.

SECTION III Title to Project Property

With respect to the title to PROJECT PROPERTY acquired as a result of this AGREEMENT, the RECIPIENT agrees as follows:

- A. Title to PROJECT PROPERTY that is personal or mixed in nature shall be held in the RECIPIENT's name subject to the restrictions of use and disposition as set forth herein and in accordance with Sections IV, V, and VIII of this AGREEMENT. If applicable, the COMMISSION shall be listed as first lien-holder on and maintain all original titles to PROJECT PROPERTY and shall be furnished one set of keys. If this AGREEMENT is terminated for any reason, title to such property shall become vested in the COMMISSION as first lien-holder and the COMMISSION shall have the right to repossess the same without notice.
- B. The RECIPIENT shall grant to the COMMISSION a security interest in the PROJECT PROPERTY through the execution of a security agreement in a form acceptable to the COMMISSION and by the filing of financing statements necessary to perfect that security interest. A copy of the Security Agreement form, acceptable to the COMMISSION, is available upon request from the designated COMMISSION contact person shown at Section XXI below.
- C. When real property is acquired and/or developed under the terms of this AGREEMENT, non-governmental RECIPIENTS agree to grant to the COMMISSION a security interest in the real property to secure RECIPIENT's performance of the terms of this AGREEMENT and shall perfect that security interest by executing a deed of trust in a form acceptable to the COMMISSION and by filing that deed of trust in the land records of the county where the real property is located. At least ten (10) days prior to the transfer of funds under the terms of this AGREEMENT for the acquisition and/or development of real property, the RECIPIENT shall provide to the COMMISSION a title certificate from a Mississippi licensed attorney approved by the COMMISSION showing that there are no encumbrances on the real property to be acquired and/or developed, and the RECIPIENT shall have the title certificate updated immediately prior to the transfer of funds for the acquisition and/or development of the subject property. A copy of the Deed of Trust form, acceptable to the COMMISSION, is available upon request to the designated COMMISSION contact person shown at Section XXI below.
- D. In addition, when real property is acquired and/or developed under the terms of this AGREEMENT, non-governmental RECIPIENTS shall convey to the COMMISSION the RECIPIENT's executive power to transfer any interest in the real property until the RECIPIENT has fulfilled its obligations under the terms of this AGREEMENT. The conveyance of the RECIPIENT's executive power shall be in a form acceptable

to the COMMISSION. A copy of the Conveyance of Executive Power form, acceptable to the COMMISSION, is available upon request to the designated COMMISSION contact person shown at Section XXI below.

- E. If the RECIPIENT is a governmental entity, in lieu of C and D above, it agrees to execute a Notice of Federal/State Interest which shall be duly recorded in the land records of the county. A copy of an acceptable form of the Notice of Federal/State Interest is available from the designated COMMISSION contact person shown at Section XXI below.

SECTION IV Use of Project Property

Use of PROJECT PROPERTY is subject to the following conditions:

- A. The RECIPIENT agrees that the PROJECT PROPERTY shall be used as described in the approved APPLICATION and this AGREEMENT. If, during the duration of the PROJECT PROPERTY, any such property is not used in such manner or is withdrawn from service for more than ninety (90) days, the RECIPIENT shall notify the COMMISSION in writing and shall dispose of such PROPERTY in accordance with guidance from the COMMISSION.
- B. In the event of the RECIPIENT's non-compliance with the provisions of this section, the COMMISSION shall impose such sanctions as it may determine to be appropriate, including but not limited to:
 - (1) Withholding or discontinuing further reimbursements or funding; and/or
 - (2) Cancellation, termination, or suspension of this AGREEMENT in whole or in part.
- C. The RECIPIENT shall keep satisfactory records with regard to the use of the PROJECT PROPERTY and shall submit to the COMMISSION upon request such information as is required.
- D. The RECIPIENT shall neither use nor permit the PROJECT PROPERTY provided hereunder to be used for any illegal or unlawful purpose or in an unlawful manner or otherwise subject the said property to confiscation. The RECIPIENT agrees to reimburse the COMMISSION for the fair, retail market value in the event that the PROJECT PROPERTY is confiscated while in the possession or control of the RECIPIENT, together with other such expenses or losses that the COMMISSION may incur as a result thereof including attorney fees.

SECTION V Encumbrance of Project Equipment or Real Property

Except as provided in Section III of this AGREEMENT, the RECIPIENT shall not execute any lease, pledge, mortgage, lien, or other contract (including a grant anticipation note or "Safe Harbor Lease" under Section 168(g)(8) of the Internal Revenue Code of 1954) touching or affecting the Federal/State interest in any PROJECT PROPERTY, nor shall it obligate itself in any other manner, with any third party with respect to such property, unless such lease, pledge, mortgage, lien, contract, or other obligation is expressly authorized in writing by the COMMISSION; nor shall

the RECIPIENT, by any act or omission of any kind, adversely affect the Federal/State interest or impair its continuing control over the use of said PROJECT PROPERTY.

SECTION VI Records and Maintenance of Project Property

For the useful life of the PROJECT PROPERTY, the RECIPIENT shall maintain the said property at a high level of cleanliness, safety, and mechanical soundness. The RECIPIENT must maintain a PROJECT PROPERTY equipment inventory and a formal maintenance program. Property records must include a description of the property, vehicle identification number, if applicable, source, cost, acquisition date, percent of Federal/State participation, detailed maintenance records, and any disposition data.

SECTION VII Insurance

The RECIPIENT shall obtain insurance adequate to protect PROJECT PROPERTY, as well as public liability insurance. The COMMISSION shall be named as loss payee for PROPERTY purchased with Federal and/or State MULTI-MODAL funds. The RECIPIENT shall submit evidence of such insurance coverage including documentation of the solicitation process annually to the COMMISSION or prior to beginning vehicle operations, work or services to carry out the PROJECT, and said coverage shall remain in effect at all times during the useful life of the PROJECT PROPERTY.

The RECIPIENT shall obtain and maintain at all times during the duration of the PROJECT insurance coverage adequate to meet the appropriate requirements of the COMMISSION. In lieu thereof, the RECIPIENT shall certify that its sub-recipient has obtained said coverage. These specific requirements shall be attached hereto as Attachment "B."

SECTION VIII Disposition of Property

The RECIPIENT agrees that the PROJECT PROPERTY shall be used as described in Section IV of this AGREEMENT. If, at any time during the duration of this PROJECT, any PROPERTY with remaining useful life is not being used as described above, the RECIPIENT shall notify the COMMISSION in writing and, after concurrence by the COMMISSION, shall dispose of such PROPERTY in accordance with applicable laws and regulations and with the following procedures:

- A. Disposal of property with remaining useful life requires written approval authorized by the COMMISSION.
 - (1) If PROJECT PROPERTY is transferred to another recipient, the transferring RECIPIENT shall be entitled to and responsible for collecting from the receiving recipient its pro rata share of the current fair market value, based on the local match ratio. The value of the local match shall be based on at least two (2) independent appraisals of the current fair market value. In the absence of independent appraisals, value of the property shall be based on standard depreciation calculations; or,
 - (2) If the PROPERTY is approved to be retained by the RECIPIENT and the property has a fair market value of at least five thousand dollars (\$5,000.00),

the RECIPIENT shall reimburse the COMMISSION in an amount based on the Federal/State pro rata share of the original cost, equal to the current fair market value of the PROPERTY. The fair market value must be based upon two (2) independent appraisals. These appraisals must be approved by the COMMISSION; or,

- (3) If the PROJECT PROPERTY is approved to be sold, it shall be advertised and sold at the highest price obtainable at public sale or via sealed bids. All sales of PROPERTY must be consistent with State laws. The COMMISSION may authorize the expenses of the sale to be deducted from the proceeds. The proceeds derived from the sale of the PROJECT PROPERTY may be retained by the RECIPIENT as long as such proceeds are used to support transportation projects approved by the COMMISSION. Otherwise the RECIPIENT shall reimburse the COMMISSION its pro rata share of the net proceeds, based on the pro rata share of the original cost.
- B. To request disposal of PROPERTY that has reached its end of useful life, the RECIPIENT must make a written request of a declaration of end of useful life to the COMMISSION. Requests for end of useful life must be made in such a manner and format as required by the COMMISSION in the approved program procedures manual or policy statements.
 - C. The RECIPIENT shall be responsible to the COMMISSION for full compliance with the current version of OMB Circular A-110 Revised and the "Common Grant Rule" for property disposition, and all other provisions of applicable Federal and State laws, rules, and regulations.

SECTION IX E-Invoice and E-Payment Paymode-X

This COMMISSION requires that all RECIPIENTS submit invoices electronically throughout the term of this AGREEMENT. RECIPIENT invoices shall be submitted to the COMMISSION using the processes and procedures identified by the COMMISSION. Procedures for new RECIPIENTS may be found in the Mississippi Department of Finance and Administration's Mississippi Agency Accounting Policies and Procedures (MAAPP) Manual in the Vendor File Maintenance Sections 11.20.10, 17.20.05, and 17.10.10 and in the related section on requirements for requesting an exemption from electronic payment found in Section 17.10.20. RECIPIENT understands that RECIPIENT must be enrolled in Paymode-X e-payment module prior to being enrolled for e-invoicing, and agrees to same, unless RECIPIENT has applied for and been granted an exemption. RECIPIENT may request assistance enrolling by contacting www.mmrs.state.ms.us or by calling the Mississippi Management and Reporting System's (MMRS) Call Center at (601) 359-1343. Payments by State Agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited in the bank account of the RECIPIENT's choice. RECIPIENT understands that the COMMISSION is exempt from the payment of taxes. All payments shall be in United States Currency.

SECTION X Agreement Reimbursement/Payments

Reimbursement payments pursuant to this award will be made for eligible costs documented by invoices for the equipment, work or services incurred in accomplishing the PROJECT. Final payment will be made after review and approval by the COMMISSION of documentation of the completion of the PROJECT and/or any audit documents as may be applicable.

The COMMISSION reserves the right to amend or withdraw this award at any time prior to its acceptance by the RECIPIENT.

SECTION XI Applicable Law/Severability

This AGREEMENT shall be governed by and construed under the laws of the State of Mississippi. Any term or provision or portion thereof which violates the laws of the State of Mississippi shall be null and void. If any term or provision of this AGREEMENT is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this AGREEMENT shall not be affected thereby and each term and provision of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

SECTION XII Availability of Funds

It is expressly understood and agreed that the obligation of the COMMISSION to proceed under this AGREEMENT is conditioned upon the availability of funds, the appropriation of funds by the Mississippi Legislature, and/or the receipt of State funds, as provided by Section 27-104-25 of the Mississippi Code.

If at any time the funds anticipated for the fulfillment of this AGREEMENT are not forthcoming or are insufficient as a result of the failure of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the COMMISSION for the performance of this AGREEMENT, then this AGREEMENT shall be suspended automatically without any notice to RECIPIENT or any surety, for a period not to exceed ten (10) business days, effective immediately upon the date that said funds are not available, without damage, penalty, cost, or expenses to the COMMISSION of any kind whatsoever. RECIPIENT is responsible for monitoring the actions of the Mississippi Legislature in its enactment of, or its failure to enact, any budget appropriation for the MDOT for the ensuing Fiscal Year, and for monitoring the MDOT website at <http://www.gomdot.com> for any such notices.

In the event that said suspension is necessary, RECIPIENT shall take all necessary steps to minimize the incurrence of costs allocable to the suspension, and advise all sub-recipients and vendors to do the same. Upon expiration of the ten (10) business days, if said funds remain unavailable, then COMMISSION may, at its discretion, elect to extend the suspension and/or issue a stop work order or terminate this AGREEMENT as provided below.

If a suspension is not canceled and the work covered by such suspension is terminated, the RECIPIENT may be paid for services rendered prior to the suspension and/or stop work order. In addition to payment for services rendered prior to the date of the suspension and/or stop work order, the COMMISSION may be liable only for the costs, fees, and expenses, if any, for demobilization and closeout of this AGREEMENT, based on actual time and expenses

incurred by the RECIPIENT. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

SECTION XIII Stop Work Order/Termination for Lack of Funding

The COMMISSION may issue a stop work order or terminate this AGREEMENT for lack of funding in the following manner:

- A. The COMMISSION may, by written order to the RECIPIENT at any time, and without notice to any surety, require the RECIPIENT to stop all or any part of the work called for by this AGREEMENT. This order shall be for a specified period not exceeding twenty-four (24) months after the order is delivered to the RECIPIENT unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the RECIPIENT shall forthwith comply with its terms and take all steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the COMMISSION shall either:
- (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such order according to and as provided elsewhere in this AGREEMENT.

Prior to the COMMISSION's taking official action to stop work under this AGREEMENT, the Executive Director of MDOT may notify the RECIPIENT, in writing, of the MDOT's intentions to ask the COMMISSION to stop work under this AGREEMENT. Upon notice from the Executive Director of MDOT, RECIPIENT shall suspend all activities under this AGREEMENT, pending final action by the COMMISSION.

- B. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the RECIPIENT shall have the right to resume work. If the COMMISSION decides that it is justified, an appropriate adjustment may be made in the delivery schedule. If the stop work order results in an increase in the time required for or in the RECIPIENT's cost properly allocable to the performance of any part of this AGREEMENT and the RECIPIENT asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage, an equitable adjustment in this AGREEMENT may be made by written modification of this AGREEMENT as provided by the terms of this AGREEMENT.
- C. If a stop work order is not canceled and the work covered by such order is terminated, the RECIPIENT may be paid for services rendered prior to the termination. In addition to payment for services rendered prior to the date of termination, the COMMISSION shall be liable only for the costs, fees, and expenses for demobilization and closeout of this AGREEMENT, based on actual time and expenses incurred by the RECIPIENT in the packaging and shipment of

all documents covered by this AGREEMENT to the COMMISSION. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

- D. If at any time the funds anticipated for the fulfillment of this AGREEMENT are not forthcoming or are insufficient due to the failure of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the COMMISSION for the performance of this AGREEMENT, the COMMISSION shall have the right, upon ten (10) days' written notice to the RECIPIENT, to terminate this AGREEMENT without damage, penalty, cost, or expenses to the COMMISSION of any kind whatsoever. The effective date of termination shall be as specified in the notice or at the end of any fiscal funding period wherein the funds are not available.

In addition to payment for services rendered prior to the date of the termination, the COMMISSION may be liable only for the costs, fees, and expenses, if any, for demobilization and closeout of this AGREEMENT, based on actual time and expenses incurred by the RECIPIENT. In no event shall the COMMISSION be liable for lost profits or other consequential damages.

SECTION XIV Responsibilities for Claims and Liability

Non-governmental RECIPIENTS shall defend, indemnify, and hold harmless the COMMISSION and all its officers, agents, and employees from any claim, loss, damage, cost, charge, expense, or reasonable attorney fees (including, but not limited to, any type of environmental claim, loss, damage cost charge, or expense), to the extent caused by any act, actions, negligence, or omission by the RECIPIENT, its agents, employees, or sub-recipients during the performance of this AGREEMENT, whether direct or indirect. Neither the RECIPIENT nor any of his agents or sub-recipients will be liable under this provision for damages arising out of the injury or damage to persons or property solely caused or resulting from the negligence of the COMMISSION or any of its officers, agents, or employees.

Non-governmental RECIPIENTS' obligation under this section shall be initiated by the COMMISSION's notice of claim for indemnification to RECIPIENT. At the COMMISSION's option, the RECIPIENT shall defend or participate and associate with the COMMISSION in the defense and trial or arbitration of any damage claim, lien, or suit and any related settlement negotiations. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the COMMISSION entirely responsible shall excuse performance of provision by the RECIPIENT. In such case, the COMMISSION shall pay all costs and fees related to this obligation and its enforcement. Should there be a finding of dual or multiple liability, costs and fees shall be apportioned accordingly.

In conjunction herewith, the COMMISSION agrees to notify all RECIPIENTS in writing as soon as practicable after receipt or notice of any claim involving RECIPIENT. These indemnities shall not be limited by reason of the listing of any insurance coverage.

All RECIPIENTS, whether public or otherwise, agree to notify the Commission of any event encountered in the course of performance of this AGREEMENT which results in injury to any person or property, or which may otherwise subject the RECIPIENT or the COMMISSION or its officers, agents, or employees to liability. The RECIPIENT shall report any such event to the COMMISSION immediately upon discovery. Reporting to the COMMISSION under this

section shall not excuse or satisfy any obligation of the RECIPIENT to report any event to law enforcement or other entities under the requirements of any applicable law.

All notices, communications, and correspondence between the COMMISSION and the RECIPIENT shall be directed to the key personnel and designated agents designated in this AGREEMENT.

SECTION XV Immigrant Status Certification/E-Verify

RECIPIENT represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. RECIPIENT agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. RECIPIENT further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. RECIPIENT understands and agrees that any breach of these warranties may subject RECIPIENT to the following: (a) termination of this AGREEMENT and ineligibility for any State or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification, or other document granted to RECIPIENT by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, RECIPIENT would also be liable for any additional costs incurred by the State due to AGREEMENT cancellation or loss of license or permit. The RECIPIENT is required to provide the certification on Attachment "C" to this AGREEMENT to the COMMISSION verifying that the RECIPIENT and sub-recipient(s), if any, are registered and participating in E-Verify prior to execution of this AGREEMENT.

It is agreed by the parties that no person employed by the RECIPIENT pursuant to the provisions hereof will be considered an agent or employee of the COMMISSION or the Mississippi Department of Transportation.

It is further agreed by the parties that no provision of this AGREEMENT is intended nor shall it be construed to give rise to a third party beneficiary claim on the person or entity not a party hereto.

SECTION XVI Disputes

Any dispute concerning a question of fact in connection with this AGREEMENT which is not disposed of by agreement shall be arbitrated by the Executive Director of the MDOT or such person as the Executive Director may designate. The decision of the Executive Director or his/her designee shall be final and conclusive, unless within fifteen (15) days from the date of receipt of the decision, the RECIPIENT submits a written request for review of the decision. In that event, the RECIPIENT shall be provided an opportunity to be heard on the review and offer evidence in

support of the RECIPIENT's position regarding the decision. The decision of the Executive Director on the review shall be final and conclusive unless determined by a court of competent jurisdiction to be unlawful for the reason it was not supported by any substantial evidence, was fraudulent, or was capricious. Until a final determination is made, the RECIPIENT shall proceed forthwith with the performance of the RECIPIENT's duties under this AGREEMENT pursuant to the Executive Director's decision.

SECTION XVII Termination of Agreement by Mutual Consent or Fault

This AGREEMENT may be terminated at any time by mutual consent of both parties. The RECIPIENT may terminate its participation in the PROJECT by notifying in writing and receiving the concurrence of the COMMISSION forty-five (45) days in advance of the termination. The COMMISSION may terminate this AGREEMENT by giving the RECIPIENT fifteen (15) days' advance written notice in the event of determination by the COMMISSION of nonperformance or any breach of any terms of this AGREEMENT by the RECIPIENT. The COMMISSION, before issuing written notice of AGREEMENT termination, may allow the RECIPIENT forty-five (45) days to correct the problems identified. If the COMMISSION makes the determination that this AGREEMENT should be terminated due to (a) insufficient performance, (b) a violation of any provision of this AGREEMENT, or (c) a misuse of the funds or equipment provided under this AGREEMENT, then it is agreed that this AGREEMENT shall be terminated upon fifteen (15) days' notice in writing from the COMMISSION to the RECIPIENT. The RECIPIENT shall be entitled to receive compensation for eligible expenses approved by the COMMISSION prior to receiving the termination notice.

SECTION XVIII Termination of Agreement by the Commission

The COMMISSION shall have the absolute right to terminate this AGREEMENT at any time without notice to the RECIPIENT, on the occurrence of any of the following occurrences, which shall constitute a material breach of this AGREEMENT:

- A. failure to perform any of the scheduled duties as set out herein;
- B. performing unacceptable work, or neglecting or refusing to remove materials or to perform anew such work as may be rejected as unacceptable;
- C. discontinuing the prosecution of the work;
- D. subcontracting or assigning the work hereunder without the prior written consent of the COMMISSION;
- E. unnecessary delay in completing the duties under this AGREEMENT;
- F. violation by the Recipient of any law of the State of Mississippi or any law of the United States of America;
- G. becoming insolvent, being declared bankrupt, filing for protection under any chapter of the U.S. Bankruptcy Code, or committing any act of bankruptcy or insolvency;
- H. allowing a final judgement to stand unsatisfied;
- I. making an assignment of the benefit of creditors;
- J. failure to provide and maintain the policies of insurance as required by this AGREEMENT;

- K. failure for any other causes whatsoever to carry on the work in an acceptable manner.

The above list of circumstances constituting material breach is not intended to be all inclusive and in no way restricts the COMMISSION from terminating this AGREEMENT for any material breach recognized by the Courts, State or Federal.

Termination without notice shall require written notice to the RECIPIENT setting out the basis for said termination and the effective date of said termination. Prior to termination without notice for reasons A, B, C, D, E or I above, the COMMISSION must show that the appropriate supervisory personnel have notified the RECIPIENT of the deficient performance and given the RECIPIENT at least fifteen (15) days to cure the deficiencies, unless said deficiencies are such that they may cause irreparable harm to PROJECT PROPERTY or public safety.

If the RECIPIENT enters into bankruptcy, voluntarily or involuntarily, any PROPERTY, or proceeds resulting from the sale thereof, purchased or financed in whole or in part with funds provided by this AGREEMENT shall not be an asset to the RECIPIENT.

In the event of a termination for any reason, the COMMISSION'S obligations and liability hereunder shall be limited solely to payment of any compensation due RECIPIENT as stated in this AGREEMENT.

SECTION XIX General Provisions

This AGREEMENT, together with the APPLICATION and Attachments hereto, constitutes the sole and entire agreement between the COMMISSION and the RECIPIENT with respect to the PROJECT hereof and supersedes any and all prior agreements, discussions, and negotiations between the COMMISSION and the RECIPIENT.

The RECIPIENT's acceptance of this AGREEMENT shall be evidenced by execution of this AGREEMENT by a duly authorized representative of the RECIPIENT, and said acceptance shall comprise a Airport MULTI-MODAL FUNDING AGREEMENT. It shall become effective upon the date of RECIPIENT's acceptance and shall remain in effect for twenty-four (24) consecutive months following execution by the Executive Director of the Mississippi Department of Transportation. Any unspent funds remaining at the end of this AGREEMENT shall automatically revert to the COMMISSION.

The COMMISSION executes all its orders and directives through the duly appointed Executive Director and the personnel of the MISSISSIPPI DEPARTMENT OF TRANSPORTATION. All notices and correspondence with or to the COMMISSION pursuant to the PROJECT identified in this AGREEMENT shall be directed to the appropriate modal Division Director, Mississippi Department of Transportation, and shall reference this AGREEMENT number.

SECTION XX Agreement Changes

Modifications, changes, or amendments to this AGREEMENT may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification, or amendment

of any term, provision, or condition of this AGREEMENT must be in writing and signed by both parties hereto.

SECTION XXI Notice, Key Personnel, and Designated Agents

The RECIPIENT agrees that Key Personnel identified as assigned to phases hereunder as set forth in this AGREEMENT shall not be changed or reassigned without prior approval of the MDOT. If prior approval is impossible, recipient shall give notice to the MDOT as soon as practicable, and by subsequent review the MDOT may approve or disapprove the action. For purposes of implementing this section and all other sections of this AGREEMENT with regard to notice, the individuals listed below are herewith designated as agents for the respective parties. Any notice required or permitted to be given under this AGREEMENT shall be in writing and sent by United States Certified Mail, Return Receipt Requested, to the party to whom the notice should be given at the address set forth below:

Commission:

Director of Aeronautics and Rails Division
Mississippi Department of Transportation
P.O. Box 1850
Jackson, MS 39215-1850
Telephone: 601-359-7850
Facsimile: 601-359-7855

Recipient:

Mr. Joe Wheeler
Tupelo Airport Authority
2704 West Jackson St.
Tupelo, MS 38801
Telephone: (662) 841-6570, ext. 0
Facsimile: (662) 841-6571

With copy to:

Office of the Attorney General
Transportation Division
P.O. Box 1850
Jackson, MS 39201
Telephone: 601-359-7600
Facsimile: 601-359-7774

THIS SPACE LEFT BLANK INTENTIONALLY

For the faithful performance of the terms of this AGREEMENT, the parties hereto have caused this AGREEMENT to be executed by their undersigned authorized representatives and the parties hereto represent that they have the authority to enter into this AGREEMENT.

WITNESS my signature in execution hereof this the ___ day of _____, 20__.

City of Tupelo

Recipient

By: _____
Signature

Attest: _____
Signature Title

WITNESS my signature in execution hereof this the ___ day of _____, 20__.

Tupelo Airport Authority

Recipient

By: _____
Signature

Attest: _____
Signature Title

WITNESS my signature in execution hereof this the ___ day of _____, 20__.

**MISSISSIPPI TRANSPORTATION COMMISSION,
BY AND THROUGH ITS DULY AUTHORIZED
EXECUTIVE DIRECTOR OF THE
MISSISSIPPI DEPARTMENT OF TRANSPORTATION**

Brad White, Executive Director

MTC Award: Book _____, Page No. _____

Airport Attachment "A"

Attached to and made a part of that certain MULTI-MODAL AGREEMENT, Project Number **MM-0070-1225**, executed by and between the Mississippi Transportation Commission and recipient(s) **City of Tupelo** and **Tupelo Airport Authority** for the purpose of setting forth the project description, projected completion date, project milestones, and applicable special provisions.

PROJECT DESCRIPTION: Installation of entry and exit gates with automated arms, ticket kiosks, signage, and lighting for a paid parking system at Tupelo Regional Airport. This project aims to improve parking management, enhance security, and increase revenue.

SPECIAL PROVISIONS:

Anything to the contrary notwithstanding, with respect to the implementation of this PROJECT, the following special provisions shall apply. In the event of a conflict between these provisions and other provisions contained elsewhere in this AGREEMENT, these special provisions shall prevail:

- A. The RECIPIENT shall be responsible for following all applicable regulations of the Federal and State regulations in the administration of the PROJECT.
- B. The RECIPIENT shall carry out and complete the PROJECT by the date set forth above in accordance with the approved plans and specifications and/or contracts for the PROJECT, incorporated herein by reference, and any revisions or modifications approved by the COMMISSION.
- C. The RECIPIENT will provide the Commission with a schedule of actions for accomplishing the PROJECT. Failure to accomplish the PROJECT in a timely manner will be the basis for the COMMISSION withdrawing the funds.
- D. The RECIPIENT will accomplish any coordination required by the Federal Aviation Administration to ensure the safety of operations and prevent any derogation of navigation aids or procedures at the Airport.
- E. The RECIPIENT will insure that all development accomplished in the PROJECT will meet Federal Aviation Administration or other Federal, State, or local standards and requirements, as applicable.
- F. The RECIPIENT agrees to expend an amount equal to or greater than one percent (1%) of the final eligible PROJECT costs.
- G. If the RECIPIENT alters the PROJECT in any manner so as to make it ineligible for Federal matching funds, then said RECIPIENT shall bear all such ineligible costs.
- H. Reimbursements for PROJECT payments made pursuant to this AGREEMENT shall be made for eligible costs documented by invoices in accordance with

Section IX of the AGREEMENT of which this is a part. Final payment will be made after review and acceptance of the completed PROJECT by the Commission.

- I. The RECIPIENT hereby agrees to operate and maintain in a safe and serviceable condition the Airport and all facilities thereon, or connected therewith, which are necessary to serve the aeronautical users of the Airport, and will not permit any activity which would interfere with its use for airport purposes.

Airport Attachment "B"

Attached to and made a part of that certain MULTI-MODAL AGREEMENT, Project Number **MM-0070-1225**, executed by and between the Mississippi Transportation Commission and recipient(s) **City of Tupelo** and **Tupelo Airport Authority** for the purpose of setting forth the requirements for insurance for the project.

The RECIPIENT shall obtain or shall cause its sub-contractor/sub-recipient or agent to obtain insurance adequate to protect the PROJECT PROPERTY, as well as public liability insurance. The COMMISSION shall be named as loss payee for PROJECT PROPERTY purchased or improved with MULTI-MODAL funds. The RECIPIENT shall submit evidence of such insurance coverage including documentation of the solicitation process annually to the COMMISSION or prior to beginning the PROJECT, and said coverage shall remain in effect at all times during the useful life of the PROJECT PROPERTY. The minimum coverage shall be as follows:

- A. Comprehensive general liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence, including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease and death), and products/completed operations;
- B. Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence, covering bodily injury and death and property damage, if applicable;
- C. Blanket employee fidelity bond insurance in an amount not less than fifty thousand dollars (\$50,000.00);
- D. Workers' compensation insurance in the amount required pursuant to the laws of the State of Mississippi;

All insurance policies required herein shall be issued by a reputable and substantial insurance company or companies licensed to do business in the State of Mississippi and shall include an endorsement providing substantially as follows:

Insurer may not cancel this policy, modify or amend its terms, or reduce coverage for a period of sixty (60) days after the Mississippi Department of Transportation has been notified by certified mail, return receipt requested, of the Insurer's intention to cancel, modify, amend, or reduce the coverage.

The RECIPIENT shall immediately notify the COMMISSION in writing of any notices from insurer concerning cancellation or reduction in insurance coverage.

On or before the inception of the Period of Performance of this AGREEMENT, the RECIPIENT shall deliver to the COMMISSION a Certificate or Certificates of Insurance, certifying the types and amounts of coverage required herein, the loss payee, and the required endorsement. Governmental RECIPIENTS must provide evidence of the aforesaid insurance coverage or a Certificate of Coverage under the Mississippi Tort Claims Act as set forth in Chapter 46, title 11, Mississippi Code 1972, as amended.

All insurance herein specified shall be carried until the work performed under this AGREEMENT is satisfactorily completed.

Airport Attachment "C"

RECIPIENT EEV CERTIFICATION AND AGREEMENT

Tupelo Regional Airport

By executing this Certification and Agreement, the undersigned verifies its compliance with the "Mississippi Employment Protection Act," Section 71-11-1 et seq. Mississippi Code of 1972, as amended, and any rules or regulations promulgated by Mississippi Transportation Commission [MTC], Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended), stating affirmatively that the individual, firm or corporation which is contracting with MTC has registered with and is participating 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 Immigration Reform and Control Act of 1986, Pub. L. 99-603,100, Stat 3359, as amended. The undersigned agrees to inform the MTC if the undersigned is no longer registered or participating in the program.

The undersigned agrees that, should it employ or contract with any consultant(s)/sub-consultant(s) and/or contractor/sub-contractor(s) in connection with the performance of this AGREEMENT, the undersigned will secure from each such sub-recipient(s) verification of compliance with the Mississippi Employment Protection Act. The undersigned further agrees to maintain records of such compliance and provide a copy of each such verification to MTC, if requested, for the benefit of the MTC or this AGREEMENT.

EEV* Company Identification Number [Required]

The undersigned certifies that the above information is complete, true and correct to the best of my knowledge and belief. The undersigned acknowledges that any violation may be subject to the cancellation of the AGREEMENT, ineligibility for any State or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted by any agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or both, any and all additional costs incurred because of the AGREEMENT cancellation or the loss of any license or permit, and may be subject to additional felony prosecution for knowingly or recklessly accepting employment for compensation from an unauthorized alien as defined by 8 U.S.C §1324a(h)(3), said action punishable by imprisonment for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or both, in addition to such prosecution and penalties as provided by Federal law.

BY: _____
Authorized Officer or Agent

Date

Printed Name of Authorized Officer or Agent of Recipient

Title of Authorized Officer or Agent of Recipient

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

* As of the effective date of the Mississippi Employment Protection Act, the applicable Federal work authorization program is E-Verify™ operated by the U. S. Citizenship and Immigration Services of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.