



CITY OF MADISON

Susan B. Crandall

City Clerk

Director of Finance and Administration

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601-853-2019

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**TO: Mike McCollum, Public Works Director
City of Ridgeland**

**FROM: Susan B. Crandall, City Clerk *sbc*
Director of Finance & Administration**

DATE: August 20, 2009

RE: City of Madison / MDOT Agreement

NUMBER OF PAGES: 10 (including coversheet)

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THANK YOU!**



Per your request.

Thank you!

INTERLOCAL COOPERATIVE AGREEMENT

This **INTERLOCAL COOPERATIVE AGREEMENT** is made and entered into as of this 28th day of August, 2006, by and between the **MISSISSIPPI TRANSPORTATION COMMISSION** (the "Commission"), a body corporate of the State of Mississippi and the **CITY OF MADISON, MISSISSIPPI**, a municipal corporation organized and existing under the laws of the State of Mississippi (the "City").

WITNESSETH:

WHEREAS, Section 65-1-8(2)(z) of the Mississippi Code of 1972, as amended and supplemented from time to time (the "MTC Act"), authorizes the Mississippi Transportation Commission (the "Commission") to enter into agreements with other entities for the purposes of accelerating the completion date of scheduled highway construction projects; and

WHEREAS, the Commission has on its regular schedule of construction, with a reasonably expected estimated completion date of May 2012, a project for the design, right of way acquisition, and construction of a split-diamond interchange, frontage roads and connector roads which together provide additional capacity to United States Interstate Highway 55 from Old Agency Road to State Road 463, along with the connector road of Madison Avenue in the City of Madison, Mississippi from Highland Colony Parkway to United States Highway 51 and State Highway 463 from Grandview Boulevard/Galleria Parkway to United States Highway 51 (the "City Portion") and the construction of a multi-lane McClellan Drive in the City of Ridgeland, Mississippi from Highland Colony Parkway to United States Highway 51 (the "Ridgeland Portion") or any other highway, road and/or bridge improvements in the County (collectively, the "Highway Project"); and

WHEREAS, the Commission reasonably estimates that the total cost of constructing the Highway Project will not exceed \$180,000,000 of which approximately \$32,350,000 is represented by the City Portion and which directly benefits the City; and

WHEREAS, Madison County, Mississippi (the "County") has determined that it is in the best interest of the County to take such action as may reasonably be necessary to facilitate and accelerate the construction of the Highway Project; and

WHEREAS, the County and the Commission entered into that certain Interlocal Cooperative Agreement, dated January 11, 2005, as amended and restated by that certain Amended and Restated Interlocal Cooperative Agreement, dated July 25, 2006 (together, the "County Interlocal") in order to accelerate the completion date of the Highway Project and to provide the funding for such acceleration in accordance with the MTC Act, a copy of which County Interlocal is attached hereto as **Exhibit A** and made a part hereof; and

WHEREAS, pursuant to the County Interlocal, the County will secure financing for the Highway Project by entering into one or more loans (the "Loan") pursuant to one or more loan agreements (the "Loan Agreement") with the Mississippi Development Bank (the "Bank") pursuant to Section 31-25-1 *et seq.* of the Mississippi Code of 1972, as amended and supplemented from time to time (the "Bank Act"); and

WHEREAS, the City has also determined that it is in its best interest to take such action as may reasonably be necessary to facilitate and accelerate the construction of the City Portion of the Highway Project; and

WHEREAS, the County Interlocal allows for the Commission to proceed with any necessary approvals and authorizations from the City to provide a financial contribution from the City in connection with financing a portion of the cost of the City Portion of the Highway Project as further provided herein; and

WHEREAS, the Commission and the City desire to enter into a joint effort as authorized by Section 17-13-1 *et seq.* of the Mississippi Code of 1972, as amended and supplemented from time to time (the "Interlocal Act") and Section 65-1-27 of the Mississippi Code of 1972 (the "City Act") to make the most efficient use of their respective legal powers and to enable the facilitation and acceleration of the construction of the Highway Project and for the City to participate financially towards the financing of the City Portion of the Highway Project and other related matters.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the Commission and the City do hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to establish a protocol for and define the respective responsibilities and obligations of the Commission and the City with respect to their joint and cooperative efforts to provide funding for the accelerated completion date of the Highway Project, a portion of which is located within the corporate boundaries of the City.

The Commission proposes to comply with all of the terms and conditions of the County Interlocal in order for the County to provide the funding for the accelerated construction of the Highway Project. The City proposes to assist the Commission in providing for the repayment of principal on the Loan in an amount not to exceed \$6,470,000 and the interest associated with such principal amount, which principal and interest amount is equal to twenty percent (20%) of the total estimated debt service amount of the City Portion of the Highway Project, and such amount is to be paid by the City pursuant to a debt service schedule to be provided in accordance with this Agreement.

II. DURATION

This Agreement shall be in force and effect for the entire term of the Loan.

III. ORGANIZATION & STATUTORY AUTHORITY

There will be no separate legal or administrative entity created pursuant to this Agreement. The City and Commission are authorized by the MTC Act, the City Act and the Interlocal Act to jointly exercise and carry out the powers, authorities, and responsibilities to be exercised by each of them pursuant to the terms of this Agreement.

IV. ADMINISTRATION

A. The Commission hereby covenants, warrants and agrees as follows:

1. To comply with all the covenants, terms and conditions of the County Interlocal, which such covenants, terms and conditions are made a part hereof;
2. To provide the City with a copy of the completed Environmental Assessment pertaining to the Highway Project, including the City Portion;
3. To provide a schedule for the design and construction of the Highway Project, including the City Portion, which such schedule shall include a preliminary schedule as to the closing of the Bonds by the County;
4. To exercise all powers needed to carry out and assist in the implementation and completion of the Highway Project, including the City Portion; and
5. To provide to the City a debt service schedule of the City's participating Loan repayment amounts with such schedule to be provided no later than five (5) days after the pricing of any Bonds issued by the Bank to fund the Loan.

B. The City hereby covenants, warrants and agrees as follows:

1. To cooperate with the County, the Commission and the Mississippi Department of Transportation ("MDOT") in the design and construction of the Highway Project, including the City Portion;
2. Effective from and after the closing of the Loan, the City shall pay to MDOT (a) the designated amount in the debt service schedule provided to the City by the Commission for the Loan repayment in connection with the City Portion of the Highway Project in the initial aggregate principal amount not to exceed \$6,470,000, redemption premium, if any, and interest accrued on such amount as provided on Exhibit A attached hereto, and (b) its pro rata share of any additional amounts consisting of additional charges (as provided in Section 4.4 of Loan Agreement), which consist of on-going costs and expenses associated with the Loan and Bonds issued by the Bank in connection therewith (together, (a) and (b) constitute the "City Contribution")
3. The City shall take such action as necessary to include its payment of the City Contribution as provided in Paragraph 2 in its annual budget and pay such payments with any legally available revenues;

4. The City hereby warrants and represents to the Commission that the City approves and supports the City Portion of the Highway Project as well as the remainder of the Highway Project, that from the date of this Agreement and until the Loan associated with the Highway Project is paid in full, the City will not withdraw its approval and support of the City Portion of the Highway Project or the remainder of the Highway Project and that the City will not take any action that would cause the Federal Highway Administration to withdraw its approval of the City Portion of the Highway Project or the remainder of the Highway Project. The City fully understands that withdrawing its support of the City Portion of the Highway Project or the remainder of the Highway Project will cause the Federal Highway Administration to withhold its support and cause the stoppage and/or significant delay of the City Portion of the Highway Project or the remainder of the Highway Project. If such an event occurs as a result of any City action, the Commission may pursue any available remedy at law or in equity or by statute to enforce any damages suffered by the Commission including but not limited to any expenditures made for the City Portion of the Highway Project before such stoppage and/or significant delay occurred and for which the Federal Highway Administration will not reimburse the Commission for such payment.
5. To execute and deliver to the Commission, County or the Bank any other documents, certificates or statements necessary for the Commission, County and the Bank to enter into the Loan, or to comply with audit standards and general accepted accounting principals; and
6. The City shall assist the Commission in every reasonable and appropriate manner in providing the Federal Highway Administration with financial, statistical and other records and reports, including but not limited to resolutions or other actions taken by the City supporting the Highway Project as may be requested or required by state and federal regulations and guidelines.
7. The City will not suspend or discontinue the payment of the City Contribution and will perform and observe all of its other agreements in this Agreement, and will not terminate this Agreement except in accordance with Paragraph IX hereof; it being the intention of the parties hereto that the City Contribution shall be paid in full when due without any delay or diminution whatever.
8. The City shall purchase rights-of-way and move utilities along Madison Avenue, which is part of the City Portion of the Highway Project.
9. The City shall use its best efforts to obtain a letter from Canadian National Railroad in which the Canadian National Railroad agrees to an at grade crossing on United States Highway 463, which is part of the City Portion of the Highway Project.

10. After the completion of the improvements to and along Madison Avenue, which is part of the City Portion of the Highway Project, the City shall provide maintenance to and along Madison Avenue.
11. The City represents and warrants that this Agreement, including without limitation the provisions of Section IV(B) hereof, is enforceable against the City in accordance with their respective terms, except as such enforceability may be limited (1) by bankruptcy, reorganization, or similar laws limiting the enforceability of creditors' rights generally or (2) by the availability of any discretionary equitable remedies.

V. JURISDICTION

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI.

Any legal action or proceeding with respect to this Agreement and any action for enforcement of any judgment in respect thereof may be brought in Hinds County, Mississippi and, by execution and delivery of this Agreement, each of the Parties hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Parties irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its notice address provided pursuant to Paragraph VIII. The Parties hereby irrevocably waive any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to above and hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any party to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the other Parties in any other jurisdiction.

VI. DEFAULTS AND REMEDIES

If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Default in the due and punctual payment by the City of any portion of the City Contribution as determined by the debt service schedule attached hereto; or

(b) Default in the performance or observation of any of the covenants and agreements in the part of the City.

Upon the occurrences of an Event of Default, the Commission may pursue any available remedy at law or in equity or by statute to enforce the payment of any portion of the City Contribution by the City. The Commission may pursue its remedies against the City even if the Federal Highway Administration has withdrawn its support of the Highway Project (including the City Portion thereof) and the City contributed to the withdrawal of such support.

VII. AMENDMENT

This Agreement may be amended at any time by the mutual consent of the City and the Commission by an agreement entered into pursuant to the provisions of the Interlocal Act. No such amendment shall have a material adverse effect on the ability of the Commission to enter into the County Interlocal or have a material adverse effect on the ability of the City to make debt service payments or to pay any portion of the City Contribution.

VIII. CONTACT PERSONS

It is understood by all parties that the City executes all of its orders and directives through its Board of Aldermen. It is understood by both parties that the Commission executes all its orders and directives through the Executive Director of the Mississippi Department of Transportation (the "MDOT").

Unless otherwise notified in writing to the contrary, the appropriate contact person (the "City Designated Officer") for the Commission for matters pertaining to this Agreement shall be:

Mary Hawkins Butler, Mayor
Susan B. Crandall, City Clerk
City Hall, 1004 Madison Avenue
Madison, Mississippi 39110
Telephone: (601) 856-7116
Facsimile: (601) 856-8786

Unless otherwise notified in writing to the contrary, the appropriate contact person (the "MDOT Designated Officer") for the Commission for matters pertaining to this Agreement shall be:

Executive Director, Mississippi Department of Transportation
401 North West Street
Jackson, Mississippi 39215-1850
Telephone: (601) 359-7002
Facsimile: (601) 359-7050

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.

IX. TERMINATION

This Agreement may be terminated by either of the parties by giving sixty (60) days' prior written notice to the other prior to the issuance of the Loan. After the closing of the Loan, this Agreement may not be terminated except by mutual consent of all the parties. Notwithstanding the provisions set forth above in this Paragraph, termination of this Agreement shall not occur until all Bonds issued in connection with the Loan have been paid or deemed to

have been paid in full in accordance with the documents providing for the issuance thereof and such documents shall have been discharged in accordance with the provisions thereof.

X. DISPOSITION OF PROPERTY

Throughout the operation of this Agreement and following its expiration, all property attendant to the Highway Project shall remain property of the Commission; provided, however, as provided in Paragraph IV.B (9), that portion of the City Portion of the Highway Project shall be transferred to the City for maintenance.

XI. SEVERABILITY

Should any provision of this Agreement be found to be unconstitutional, or otherwise be contrary to the laws of the State of Mississippi or the United States of America, to the extent that it is reasonably possibly to do so, the remainder of this Agreement shall remain in full force and effect.

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WITNESS the signatures of the duly authorized officers of the Cities and the Commission as of the date first above written.

CITY OF MADISON, MISSISSIPPI


By: Mary Heaton Bisher
Mayor

ATTEST:

Susan B. Crandall
City Clerk

(SEAL)

**MISSISSIPPI TRANSPORTATION
COMMISSION, by and through the duly
authorized Executive Director of the Mississippi
Department of Transportation**

By: 
Larry Brown, Executive Director
Mississippi Department of Transportation