

**MEMORANDUM OF AGREEMENT
BETWEEN THE MISSISSIPPI TRANSPORTATION COMMISSION
AND _____, Mississippi
Project No. _____**

This Memorandum of Agreement (the "Agreement") is entered into by and between the Mississippi Transportation Commission (the "Commission"), which executes its policies through the Executive Director of the Mississippi Department of Transportation ("MDOT"), whose address is 401 North West Street, Jackson, MS 39201, and _____ (the "Recipient") whose address is _____. This Agreement shall become effective upon the date of latest execution shown below.

WHEREAS, the Mississippi Legislature has created a special fund known as the 2022 Emergency Road and Bridge Repair Fund (the "ERBRF") pursuant to Section 11 of Senate Bill No. 2780, 2022 Regular Session; and,

WHEREAS, pursuant to said statute, the State Fiscal Officer shall transfer sufficient amounts from the Capital Expense Fund to fund this program, and deposit the same into the said ERBRF; and

WHEREAS, the Mississippi Transportation Commission, acting through the Mississippi Department of Transportation has enacted rules pursuant to the Mississippi Administrative Procedures Act for the distribution of said funds; and

WHEREAS, the Recipient has applied for and been chosen to receive a grant of funds for the replacement of bridge number(s) _____ and other associated activities identified in the Recipient's application (the "Project") as approved by the Commission on July 12, 2022 (the "Award Date"); and

WHEREAS, it is understood by and between the parties that the Commission has no funds available to contribute to the Project other than those being provided through the ERBRF grant described below, and that the Recipient is solely responsible for any costs of the Project that exceed the amount of the ERBRF grant.

NOW, THEREFORE, in consideration of the promises and agreements of the parties hereto, as shown below, it is hereby agreed as follows:

**ARTICLE I.
DUTIES AND RESPONSIBILITIES**

A. THE COMMISSION WILL:

Provide funding for the Project identified in this Agreement in an amount not to exceed _____ according to the terms and conditions hereof.

If preconstruction activities were requested in the application and funds were not

expended prior to the Award Date, transfer an initial installment of funds from the ERBRF in the amount of _____ to the governmental entity shown above who owns/sponsors the public road or bridge Project to be used for preconstruction activities.

Once preconstruction activities are complete and the Recipient has awarded a construction contract, transfer the remaining balance of the grant amount (not to exceed the amount needed to complete the Project). This transfer shall be made promptly after the award of the construction contract by the Recipient and after the required documents have been provided to MDOT.

The maximum engineering costs allowed to be paid from ERBRF grant monies shall be calculated based on a percentage of the successful construction bid amount. For projects requiring Preliminary Engineering (PE) and Construction Engineering and Inspection (CE&I), the maximum amount of the total engineering costs to be paid from the ERBRF shall be fifteen percent (15%) of the amount of the successful construction bid. For projects that do not require PE services, the maximum amount of engineering costs to be paid from the ERBRF for engineering costs shall be ten percent (10%) of the amount of the successful construction bid. The total amount allowed for PE and/or CE&I costs shall be the actual cost of these services, or the maximum amounts outlined above, whichever is less.

If the Project involves an existing or ongoing construction contract, transfer the grant amount (not to exceed the amount needed to complete the Project), after the required documents have been provided to MDOT. **Pursuant to Mississippi Code Section 65-1-179, under no circumstances shall Recipient use ERBRF monies to reimburse any amount that has been expended on the Project prior to the Award Date.**

B. THE RECIPIENT (CITY/COUNTY) WILL:

Execute and return this Agreement to MDOT by August 31, 2022.

Submit the appropriate approval (e.g., board order) identifying the Engineer of Record for the Project, who shall be a licensed Professional Engineer registered with the MS Board of Licensure for Professional Engineers and Surveyors, prior to the first transfer of funds.

Use the funds solely for the costs of the Project as defined in this Agreement and upon the terms and provisions of this Agreement. Failure to adhere to any provision within the Agreement may result in immediate withdrawal of future funding and will require the return of all unexpended funds upon written demand from MDOT.

Maintain Emergency Road and Bridge Repair (ERBR) Funding in a separate account or sub-account for the Project identified in this Agreement, so that project funding and costs can be easily tracked. The Recipient must be enrolled in PayMode e-payment module prior to receiving ERBRF grant monies. The Recipient may request assistance enrolling by contacting www.mmrs.state.ms.us or by calling the MMRS Call Center at (601) 359-1343. MDOT uses Mississippi's Accountability System for Government Information and Collaboration (MAGIC), and payment shall be made, and remittance information provided electronically as directed by the State to the bank account of the Recipient's choice.

Make every effort to expend all funds by June 30, 2025. Should any projected deviation from this schedule arise, the Recipient agrees to notify MDOT in writing of the specific details of delay and request an extension as soon as the deviation becomes apparent. Should this request be denied, the Recipient will return any ERBRF monies in the amount determined by MDOT. **In the event a construction contract is not awarded by January 31, 2025, MDOT reserves the right to revoke the grant award and demand repayment of ERBR funds.** The Recipient agrees to promptly return any unexpended ERBRF monies for revoked awards as required by MDOT.

Secure all funding necessary to complete the Project and commit the same prior to or at the time of grant award. All funding associated with the selected ERBRF Project shall be secured prior to the award of the construction contract and shall not be dependent on any future grants or awards. All funding in excess of the ERBRF grant amount necessary to complete the Project is the sole responsibility of the Recipient. **Pursuant to Mississippi Code Section 65-1-179, under no circumstances shall Recipient use ERBRF monies to reimburse any amount that has been expended on the Project prior to the Award Date.**

Follow state law for procurement of professionals and letting of construction projects. Failure to follow state laws may result in withdrawal of grant funds. If any federal funds are used in conjunction with ERBR funds, all federal procurement laws must be followed.

Advertise construction projects in accordance with all applicable laws and, to the extent possible, make advertisements available to the Mississippi Association of General Contractors, Mississippi Road Builders' Association, and Mississippi Asphalt Pavement Association.

Maintain on file, the following items in relation to the Project and provide the same to MDOT upon request:

A copy of all design documents.

Proof of Advertisement (i.e., copy of the advertisement, MPTAP and/or procurement portal posting, and any other such documents) for any Request

for Qualifications (RFQ), Request for Proposals (RFP) or Invitation for Bids (IFB).

A copy of the project schedule.

A copy of the Construction Documents and Invitation for Bid Documents and any other IFB, RFQ, or RFP.

Documents including executed consultant Contracts for which funds will be expended.

A list of bidders/respondents, including the Bid Tabulation Form/Register of Proposals. For construction awards, this must include the recommendation of the Engineer of Record, for the award of contract. For items procured by RFQ or RFP, this must include the evaluation committee tally sheets/overall scoring in support of the award decision.

A copy of Contract award for construction of Project.

A copy of all contractor pay requests and Professional pay requests and approval of and proof of payments for said services.

A copy of all bank statements of the separate account or sub-account containing the ERBR funds.

Directly administer funding for the Project, maintaining said funds in a separate distinct account or sub-account from the general funds of the Recipient for each Project funded. Any interest earned shall remain in the account or sub-account and shall be used on the Project identified in this Agreement. **Funding shall not be transferred back to the State, or any other fund associated with the State Treasury unless directed by MDOT in writing.**

Expend Project Funds in the following manner:

The Recipient agrees that if any funds are available at the completion of the Project, it will notify MDOT, in writing with a copy of any required approvals (e.g., board, council, or commission), of the amount of funds remaining and either: request an amendment to the Project defined in this Agreement for purposes consistent with any and all applicable state or federal statutes, rules, regulations, and/or guidance, or notify MDOT that the funds are not needed and request to transfer funds back to the ERBRF.

All expenditures of funds deposited from the ERBRF Program will be spent solely on costs directly associated with the Project as identified in this Agreement. The Recipient agrees to **maintain accurate Project documentation and invoices for all expenditures associated with the Project for not less than 3 years** from final release of maintenance or

longer, if required by IRS or other regulations.

Project Funds shall not be used on the Recipient's operating expenditures (e.g., salaries, equipment, commodities, and or related costs) with the exception of work performed by the Engineer of Record and his staff in an amount that is reasonable and supported by historical data up to the amount allowed for such fees.

Adhere to the following Project Requirements:

A current Certificate of Authority is required by any corporation, firm, or partnership employing the Mississippi Licensed Professional Engineer performing services on behalf of the Recipient in compliance with Mississippi Code Section 73-13-1, *et seq.*, as amended.

Design Plans shall be stamped by a Professional Engineer who is knowledgeable in the field of road design or bridge design, as applicable, and is registered with the MS Board of Licensure for Professional Engineers and Surveyors in compliance with Mississippi Code Section 73-13-1, *et seq.*, as amended.

The Recipient must maintain on file the documents listed above and provide these documents to MDOT and the Office of State Aid Road Construction (OSARC) upon request.

There shall be no changes to the Project as approved in this Agreement without detailed documentation as to the reason for the requested change. Requests for changes shall be submitted to MDOT in writing with a copy of any required approvals (e.g., board, council, or commission). Project changes shall not be made without written approval by MDOT.

Project shall meet current OSARC Design Standards, MDOT Design Standards, and/or AASHTO Design Standards, whichever is appropriate. Recipient shall provide stamped certification from the Engineer of Record that the design meets the applicable standards, as required above.

The Recipient shall adhere to the Manual on Uniform Traffic Control Devices regarding maintenance of traffic control features and the safety of workers and the traveling public for the road(s) and/or bridge(s) under construction and all other roads and entrances to adjacent properties within the limits of the project.

The construction shall be in accordance with the latest version of the Mississippi Standard Specifications for State Aid Road & Bridge Construction or MDOT Standard Specifications for Road & Bridge Construction, including all addenda, whichever is appropriate.

The construction shall be in accordance with the latest version of the MDOT Construction Manual or the OSARC Construction Manual, whichever is appropriate.

New bridges shall be designed and load rated in accordance with AASHTO LRFD Bridge Design Specifications, current edition, including seismic conditions where appropriate. Bridge design and load rating for bridge widening or rehabilitation shall be in accordance with the AASHTO Standard Specifications for Highway Bridges, 17th Edition.

For bridge projects, once the piling is driven and prior to placement of caps or superstructure, the Recipient must submit to MDOT and OSARC electronic documentation using MDOT or OSARC pile driving record forms showing that the piles have reached the pile bearing as detailed in the construction plans. Any piling driven shall achieve the desired minimum bearing capacity and minimum tip elevation.

Upon completion of projects containing bridge construction or rehabilitation, an Initial Inspection of the bridge is required in accordance the National Bridge Inspection Standards (NBIS) and with Section 4.2, AASHTO Manual (Incorporated by reference, see § 650.305 and § 650.317 of NBIS) for each new, replaced, rehabilitated, and temporary bridge as soon as practical, but within 3 months of the bridge opening to traffic.

The Initial Inspection shall be made to fully document the as-built condition of the bridge. This also serves to record required bridge inventory data, establish baseline conditions, and establish the intervals for other inspection types. A load rating shall be performed to document the live load carrying capacity of each bridge after the projects are complete. The findings of the inspection shall be documented in an inspection report and submitted via AssetWise.

For bridge replacement projects or projects that allow for repairs to a bridge in lieu of complete replacement, all components, upon completion of construction, shall achieve an NBI condition rating of 7 or greater and the bridge shall not be load-restricted (posted) for Mississippi legal loads.

Projects shall comply with all environmental permitting requirements as specified by all necessary parties including, but not limited to, Mississippi Department of Environmental Quality (MDEQ), US Army Corps of Engineers (USACE), and the Mississippi Department of Archives and History (MDAH). All required permits shall be submitted to MDOT for review prior to the transfer of any construction funds.

The Recipient shall provide an electronic copy of the completed and stamped as-built plans in a format approved by MDOT. In addition, the Recipient shall provide stamped certification from the Engineer of

Record that the Project was constructed in accordance with the applicable standards, as required by MDOT.

At the end of the Project, plans and all Project documentation shall be owned by MDOT and, upon request, shall be provided to MDOT on CD or other acceptable electronic means of data storage.

Report upon Project progress as follows:

The Recipient agrees to provide quarterly reports and any required supporting documentation on a form prescribed by MDOT that summarize all work and expenditures on the Project since the last report. The quarterly report shall provide an updated schedule that has estimated dates for milestones and shall also provide a copy of the most recent bank statement of the separate account or sub-account used to maintain ERBR funding for the Project described in this Agreement. The first quarterly report shall include a bank statement showing proof of the first ERBRF proceed deposit. If the Recipient receives a second transfer from MDOT, the quarterly report immediately following this transfer shall also include a bank statement showing proof of the second ERBRF proceed deposit. The first quarterly report shall be provided within 30 days of the end of the next calendar quarter after the effective date of this Agreement and thereafter within 30 days after the end of each succeeding calendar quarter (i.e., March 30, June 30, September 30, and December 31). Failure to provide required reports may result in reduction of the grant award and/or the withdrawal of Project funding, in which case funds would be returned to the ERBRF upon written demand from MDOT.

The Recipient further agrees to make such other reports, disclosures, or certifications as may be required by MDOT.

ARTICLE II. GENERAL PROVISIONS

- A. **The Commission has no funds available to contribute to the Project other than those being provided through the ERBRF described above. The Recipient is solely responsible for any costs of the Project that exceed the amount of the transfer of funds as defined in this Agreement.**
- B. This Agreement shall be subject to termination only upon written agreement by all parties or notice to terminate by MDOT for failure to comply with the terms of this Agreement.
- C. It is understood that this is a Memorandum of Agreement, and that more specific

requirements for the design and construction, procurement, and payment for the Project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the policies and procedures of MDOT, and other related regulatory authorities. The Recipient agrees that it will abide by all such applicable authority.

- D. All contracts and subcontracts shall include a provision for compliance with “The Mississippi Employment Protection Act,” as published in the General Laws of 2008 and codified in Mississippi Code Section 71-11-3. Under this Act the Commission, the City, and every contractor 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 Immigration Reform and Control Act of 1986, Pub.L. 99-603, 110 Stat. 3359, as amended.

ARTICLE III. AMENDMENTS

This Agreement may be amended in writing as mutually agreed upon by the parties.

ARTICLE IV. 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 possible to do so, the remainder of this Agreement shall remain in full force and effect.

ARTICLE V. RELATIONSHIP OF THE PARTIES

- A. The Commission and the Recipient are separate public agencies, and each, in accordance with its status as an independent agency, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, or claim to be, an agent, officer, or employee of the other by reason hereof. The employees, agents, and contractors of MDOT and the Recipient will not by reason hereof make any claim, demand, or application for any right or privilege applicable to an officer or employee of the other, 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. No provision of this Agreement is intended, nor shall it be construed, to grant any right, title, or interest to any person or entity not a signatory hereto.

**ARTICLE VI.
RESPONSIBILITIES FOR CLAIMS AND LIABILITY**

- A. The Commission, MDOT, OSARC, and all of their agents, officials, and employees have no obligations or responsibilities toward the activities conducted under this Agreement except those specifically stated herein, and have no authority to select, employ, supervise, or control any contractor employed by the Recipient, or any employee, agent, or official of the Recipient, or any of the Recipient's contractors or subcontractors.
- B. The Commission will not be a party to any contract or subcontract entered into by the Recipient, other than this Agreement.
- C. The Recipient will indemnify the Commission and hold it harmless to the extent allowed by Mississippi Code Section 65-1-75.

**ARTICLE VII.
AUTHORITY TO CONTRACT**

The Undersigned party represents that he/she has the authority to enter into this Agreement for and on behalf of the Recipient. The Commission authorized the Executive Director to execute this Agreement at its meeting of July 12, 2022.

So agreed this the _____ day of _____, 2022.

MISSISSIPPI TRANSPORTATION COMMISSION

By and through its duly authorized
Executive Director

Brad White, Executive Director
Mississippi Department of Transportation

So agreed this the _____ day of _____, 2022.

(Name), (Title)
(Recipient)

ATTEST:

Recorded at Book 22, Page 676, of the Minutes of the Mississippi Transportation Commission.