

**RESOLUTION AUTHORIZING APPROPRIATION OF FUNDS TO
CRUISIN' THE COAST**

WHEREAS, the City of Diamondhead, Mississippi, (hereinafter, the "City"), at a Meeting of the City Council held on November 19, 2012, established a Committee to coordinate with Cruisin' the Coast for Diamondhead's inclusion in the annual event; and

WHEREAS, the Committee has requested a budget appropriation in the amount of \$17,130 for the 2015 Cruisin' the Coast event in Diamondhead; and

WHEREAS, the expenditure of said funds would bring favorable notice to the opportunities, possibilities and resources of the City, including but not limited to the culture, hospitality, possibility as an ideal vacation destination, economic development possibilities and to bring attention to the community as a whole; pursuant to §17-3-1; and

WHEREAS, the expenditure of said funds would fall within the provisions of §17-3-3 as public entertainment which would be helpful in advancing the moral, financial and other interests of the City, including but not limited to advancing the economic development of the City and the exposure of the City as a tourist destination.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DIAMONDHEAD, MISSISSIPPI THAT:

1. That the facts recited in the Preamble hereinabove are hereby adopted as official findings of the City.
2. That the City appropriate Seventeen Thousand On Hundred Thirty Dollars (\$17,130.00) for advertising expenses associated with the City's Cruisin' the Coast event in 2015.
3. That this Resolution takes effect immediately.

The above and foregoing Resolution, after having been first reduced to writing and read by the City Clerk was introduced by Councilman _____, seconded by Councilman _____ and was adopted by the following roll call vote:

| | AYE | NAY | ABSENT |
|------------|-------|-------|--------|
| LOPEZ | _____ | _____ | _____ |
| LAFONTAINE | _____ | _____ | _____ |
| SISLOW | _____ | _____ | _____ |
| RECH | _____ | _____ | _____ |
| KNOBLOCH | _____ | _____ | _____ |
| SCHAFFER | _____ | _____ | _____ |

WHEREUPON, the Mayor thereby declared the motion carried and the Resolution adopted this the ____ day of _____, 2015.

ATTEST:

ADOPTED:

CITY CLERK

MAYOR

**CITY OF DIAMONDHEAD, MISSISSIPPI
RESOLUTION OF AUTHORIZATION**

RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DIAMONDHEAD, APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE MISSISSIPPI TRANSPORTATION COMMISSION DULY AUTHORIZED BY MISSISSIPPI DEPARTMENT OF TRANSPORTATION ESTABLISHING THE AGREED CONDITIONS UNDER WHICH THE CITY OF DIAMONDHEAD MAY UTILIZE SURFACE TRANSPORTATION PROGRAM FUNDS AND FURTHER TO AUTHORIZE THE CITY MANAGER TO EXECUTE SAID MEMORANDUM OF UNDERSTANDING.

WHEREAS, The City of Diamondhead has applied for and been granted Surface Transportation Program funds for a Traffic Circulation Study available through the Mississippi Transportation Commission, a body Corporate of the State of Mississippi acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation (MDOT), and

WHEREAS, the Mississippi Transportation Commission has presented for signature by the City Manager a Memorandum of Understanding establishing the agreed conditions under which the City may utilize the funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DIAMONDHEAD, MISSISSIPPI, AS FOLLOWS:

Section 1. That all of the findings of fact made and set forth in the preamble to this resolution shall be and the same are hereby found, declared, and adjudicated to be true and correct.

Section 2. That the Mayor and City Council have approved and accepted the Memorandum of Understanding establishing the agreed condition under which the City may utilize the funds.

Section 3. That the City Manager is hereby authorized and directed to execute any and all documents as may be necessary in order to consummate the transaction contemplated by the resolution and upon execution, each of the documents and certificates shall be legal, valid, and binding obligations of the Municipality enforceable in accordance to the terms provided therein.

Councilmember _____ moved, Councilmember _____ seconded the seconded the motion, to adopt the foregoing Resolution and after the same had been read and considered section by section and put to a roll call vote, the results was as follows:

| | |
|--------------------------|-------------|
| Councilmember Lopez | voted _____ |
| Councilmember LaFontaine | voted _____ |
| Councilmember Sislow | voted _____ |
| Councilmember Rech | voted _____ |
| Councilmember Knobloch | voted _____ |
| Mayor Schafer | voted _____ |

The motion having received the foregoing vote of the Governing Body, the Mayor declared the motion carried and the Resolution adopted, on this the 21st day of July, 2015.

CITY OF DIAMONDHEAD, MISSISSIPPI

Kristin Ventura, City Clerk

Mayor Thomas E. Shafer, IV

seal

Memorandum of Understanding

STP-0023-00(050)LPA/107130-711000
Diamondhead Traffic Circulation 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 agreed conditions under which the LPA may utilize Surface Transportation Program (STP) funds and subsequent acts to complete the proposed project as described below, effective as of the date of the last execution below.

WHEREAS, the LPA has announced its intentions to conduct a traffic analysis study to determine the purpose and need for any traffic improvements within the study area (hereinafter referred to as the "PROJECT"); and

WHEREAS, it is anticipated that approximately \$60,000.00 in federal funds (80% match) and \$15,000.00 in local funds (20% match) will be available for the PROJECT. The above funds are subject to normal reductions and obligational limitations; and

WHEREAS, the LPA agrees that if funds from FHWA are utilized that the LPA will be bound by, and will comply with, any and all federal requirements and the MDOT operating procedures; and

WHEREAS, the LPA will be responsible for all PROJECT cost over and above the maximum amount of Federal Funds allocated to the PROJECT by the COMMISSION; and

WHEREAS, the MDOT requires the LPA to provide the local share previously stated; and

WHEREAS, the COMMISSION is hereby consenting to allow the LPA to manage the PROJECT under the terms and provisions of this Memorandum of Understanding; and

WHEREAS, the COMMISSION and the LPA desire to set forth more fully the understanding of the parties with respect to the process by which this will be accomplished, and this document supersedes all other agreements unless herein specified.

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the COMMISSION mutually enter into the following Memorandum of Understanding for these and any future federal funds that may be allocated to this PROJECT

ARTICLE I. DUTIES AND RESPONSIBILITIES

A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, will:

1. Designate a full time employee of the LPA as the Project Director, who will serve as the person of responsible charge for the PROJECT and will coordinate all PROJECT activities with the MDOT District LPA Coordinator.
2. Follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies necessary for the PROJECT. This shall include, but not necessarily be limited to, the use of the latest version of the LPA Consultant Operating Procedures for Professional Services. In addition, it shall be understood that the MDOT District LPA Coordinator referenced in the PDM shall be MDOT's Planning Representative.
3. Agree that if any act of omission or commission on the part of the LPA causes loss of Federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA will be solely responsible for all additional costs.
4. Promptly pay any consultants or contractors monies due them within 45 days of submittal of invoice from the consultant or contractor. MDOT reserves the right to withhold Federal reimbursement until adequate proof of payment has been produced should the above not be followed.
5. If there is any requirement for "matching" funds, or if the anticipated cost of the PROJECT will exceed the available Federal-aid funds, the LPA shall be solely responsible for providing said local share or any funds above the Federal-aid funds at such time as the funds may be required.
6. 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 .
7. The LPA will be required to acknowledge the MDOT and the FHWA for their participation in the project in any news releases or other promotional material for the PROJECT. The PROJECT sponsor shall notify the MDOT LPA Division of any ceremonies related to the PROJECT.
8. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards. The accounting system

and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.

B. THE COMMISSION WILL:

1. Allow the LPA to conduct the PROJECT provided that the design meets with MTC and FHWA approval and that all costs of the improvements that are not covered by federal funds are borne by the LPA.
2. Enter into cooperative agreements or permits necessary to allow the LPA access to the property of the COMMISSION for the purposes of conducting the PROJECT.
3. Work with the LPA, through the MDOT Planning Representative, during the various phases of the work with the goal of producing a project that will be acceptable to the COMMISSION upon completion.
4. Review all submittals in a timely manner, in accordance with the PDM, to allow the project to progress in an orderly fashion.
5. During the progress of the PROJECT, assist the LPA in obtaining reimbursements of federal funding for any phase that is eligible for reimbursement. All costs associated with this process, and any other involvement by the MDOT staff in this PROJECT, will be charged as a project cost.
6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.

ARTICLE II. GENERAL PROVISIONS

A. Should the LPA fail to complete the PROJECT as contemplated by this agreement, the LPA agrees that it will bear all costs of completion over and above the funds supplied by the FHWA through MDOT. The COMMISSION shall have the right to audit all accounts associated with the PROJECT, and should there be any overpayment by the COMMISSION to the LPA, the LPA agrees to refund any such overpayment within 30 days of written notification. Should the LPA fail to reimburse the COMMISSION, the COMMISSION shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.

B. This Memorandum of Understanding shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice shall not, however, cancel any contract made in reliance upon this agreement and underway at the time of termination. Any contract underway shall be allowed to conclude under its own terms. The LPA agrees to bear complete and total legal and financial responsibility for any such agreement. Additionally, funds may be suspended/terminated under the provisions of Section F.

C. It is understood that this is a Memorandum of Understanding and that more specific requirements for the conduct of the traffic analysis study are contained in the

Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the Standard Operating Procedures for MDOT, and other related regulatory authorities. The LPA agrees that it will abide by all such applicable authority.

D. In the event that any act of omission or commission on the part of the LPA causes loss of Federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA shall be solely responsible for all additional costs.

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

F. It is understood by all Parties that regardless of the results of the PROJECT, the COMMISSION has no responsibility or obligations as a result of the study.

G. The Executive Director of MDOT may withhold federal funds for the PROJECT for any of the following reasons:

- a. Failure to proceed with the work when so instructed by the MDOT or to adhere to the requirements of the contract.
- b. Failure to perform the work with sufficient workmen, equipment and materials to assure completion within contract time.
- c. Performing unacceptable work, or neglecting or refusing to remove materials or to perform any such work as may be rejected as unacceptable.
- d. Discontinuing the prosecution of the work.
- e. Failure to comply with all federal, state and local laws, ordinances, regulations, permits, and all orders and decrees of bodies or tribunals having jurisdiction or authority which affect those engaged or employed on the work or affect the conduct of the work.
- f. Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
- g. Allowing a final judgment to stand unsatisfied.
- h. Making an assignment for the benefit of creditors.
- i. Failure for any other cause whatsoever to carry on the work in an acceptable manner.

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

Before federal Funds are terminated, the LPA will be notified in writing by the Executive Director of the conditions which make termination of funds imminent. If no effective effort has been made by the LPA, its agents, employees, contractors or subcontractors, to correct the conditions of which complaint is made, within fifteen (15) calendar days after notice is given, the Executive Director may declare the Federal Funds suspended for the PROJECT and notify the LPA accordingly. The LPA will then have forty-five (45) days in which to correct all conditions of which complaint is made. If all conditions are not corrected within forty-five (45) days, the Executive Director may declare the federal funds for the PROJECT terminated and notify the LPA accordingly. If all conditions are corrected, within the forty-five (45) day period, the LPA will be reimbursed under the terms of this agreement, for all work satisfactorily completed during the forty-five days period.

ARTICLE III. NOTICE & DESIGNATED AGENTS

A. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise indentured in the addenda hereto:

For Contractual Administrative Matters:

COMMISSION:

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

LPA:

Clovis Reed, City Manager
City of Diamondhead
5000 Diamondhead Circle
Diamondhead, MS 39525
Phone: (228) 222-4626
Fax: (228) 222-4390

For Technical Matters:

COMMISSION:

Andy Jeffrey, P.E.
Planning Division
MDOT Administrative Building
401 North West Street
Jackson, MS 39201
Phone: 601-359-7685
Fax: 601-359-7652

LPA:

Clovis Reed
City Manager
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 Understanding shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Understanding shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Memorandum of Understanding is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

ARTICLE VII. AUTHORITY TO CONTRACT

Both parties hereto represent that they have authority to enter into this Memorandum of Understanding.

This Agreement may be executed in one or more counterparts (facsimile transmission, email or otherwise), each of which shall be an original Agreement, and all of which shall together constitute but one Agreement.

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

City of Diamondhead, Mississippi
By and through

Mr. Clovis Reed, City Manager

Approved by the City Council on: _____ in Minute Book _____, Page _____

Attested:

City Clerk

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

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director

Melinda L. McGrath, PE
Executive Director
Mississippi Department of Transportation

Book _____, Page _____,