

Minute Book 32

June 21, 2022

BOARD MEETING

OF THE

MAYOR

AND

BOARD OF ALDERMEN

OF THE

TOWN OF TUNICA, MISSISSIPPI

OFFICERS:

Mayor Andrew T. Dulaney

Alderman Lee B. Turner

Alderman Valerie Hartsfield

Alderman Rebecca P. Fyfe

Alderman Adam Fullilove

Alderman Daniel M. Pierce

Town Attorney Richard W. Ryals, II

Town Clerk Kate Scott Pennock

Chief of Police Kevin Hatton

Town Chaplain Danny Smith

REGULAR THIRD TUESDAY JUNE 2022, MEETING
OF THE MAYOR AND BOARD OF ALDERMEN

BE IT REMEMBERED that Tuesday, June 21, 2022, being the third Tuesday of said month and the day fixed by Board order for holding the second monthly meeting, said meeting was held in the Boardroom in the Municipal Complex at 909 River Road in the Town of Tunica, Mississippi, beginning at 3:00 p.m. with the following present or absent as indicated below:

| | |
|--|----------|
| Mayor Andrew T. Dulaney | Present |
| Alderman Lee B. Turner | Present |
| Alderman Valerie Hartsfield | Present |
| Alderman Rebecca P. Fyfe | Present* |
| Alderman Adam Fullilove | Present |
| Alderman Daniel M. Pierce | Present |
| Town Clerk Kate Scott Pennock | Present |
| Town Attorney Richard W. Ryals, II | Absent |
| Police Chief Kevin Hatton | Absent |
| Public Works Manager Reggie Griffin | Present |
| Operations Manager Thomas J. Robinson, III | Present |
| Town Chaplain Danny Smith | Present |
| *Via telephone. | |

Others in attendance are listed on the attendance sheet.

APPENDIX A – ATTENDANCE SHEET

Mayor Dulaney called the meeting to order and led in the pledge of allegiance. Chaplain Smith led in prayer.

The Board considered the minutes from the June 7, 2022, meeting. Alderman Pierce moved to approve the minutes as written and previously provided to the Board. Alderman Fullilove seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted.

REPORTS:

- Police Report: Investigator Cheslock reported for the Police Department in Chief Hatton's absence. Investigator Cheslock reported on various activities for the Police Department over the last several weeks. There being no further discussion or any questions for Investigator Cheslock, Investigator Cheslock concluded his report.

- Public Works: Mr. Robinson and Mr. Griffin reported on public works and other operations. Mr. Robinson discussed the water and sewer system. Mr. Griffin gave an overview of what the street crew has been working. Following the reports, Mr. Robinson and Mr. Griffin were thanked for the information.
- Tunica Main Street: Ms. Withers updated the Board on upcoming events. Ms. Withers advised that the event honoring Bobby Williams was well attended and was a success. She stated that Mr. Williams and his family were appreciative of Main Street and the Town helping with this. The Farmers' Market has begun and will be held on each Wednesday at 5:00 p.m. at the Tate Log Cabin. Independence Day Parade will be held on July 1, 2022, in the Veterans Park.
- David Graves provided the Board with his report. Mr. Graves stated that if anyone knows of issues that he needs to address, just give him a call.

APPOINTMENTS: The Tunica County Museum, Inc. Board had previously and timely requested an opportunity to address the Board. Mayor Dulaney recognized Mr. Boyd, Chairman of the Museum Board. Mr. Boyd introduced the other Board member present. Mr. Boyd turned the matter over to Richard Taylor who made the presentation. Mr. Taylor provided a brief overview of the history of the Tunica County Museum including discussing the loss of funding which Tunica County provided for many years. With the loss of funding from Tunica County, the Museum has used its reserve funds to operate. The reserve funds have basically been depleted. The Museum operated its facility located on US Highway 61 and owns the Tate Log Cabin. Given that the Museum has no available funds and no current source of revenues, it will not be operating its facility on US Highway 61. The Museum will not forfeit its charter. However, the Museum will move various exhibits to the Tate Log Cabin. Mr. Taylor advised that the Museum will raise funds for operating the Tate Log Cabin. Mr. Taylor discussed that the Museum has two long time employees. Each works 21 hours per week. Mr. Taylor requested that the Town hire the two part time employees for 21 hours per week at an hourly rate of \$10.00 per hour with the two employees to be assigned to work at the Tate Log Cabin. Following the presentation, Mr. Taylor was thanked for his dedication to the Museum. Mayor Dulaney recommended that the matter be referred to Mr. Ryals so that he can advise the Board of Aldermen whether it has the authority to do this if it decided to. Following a briefly discussion, Mr. Dulaney will check with Mr. Ryals and report back to Board.

Mayor Dulaney updated the Board of Aldermen on the DRA drainage project on Beatline Road. Bids are due on July 14, 2022. The notice to bidders will be published in the Clarksdale Press Register and Tunica Voice. It was proposed that the bids will be received, opened and tabulated by Tim Verner, PE for the project, Granville Tate, North Delta Planning and Development District, Thomas J. Robinson, and Andrew Dulaney. A recommendation will be made to the Board at the Board's July 19, 2022, meeting. Aderman Hartsfield made a motion to approve the

recommendation for the bid opening with the Board of Aldermen to consider the bids during the July 19, 2022, regular meeting. Alderman Turner seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted.

The Board next discussed the public hearing relating to the possible amendments to the Tunica Comprehensive Plan and Zoning Regulations relating to medical cannabis. The Board previously discussed having the public hearing today. Based on the time required for publication, the notice that is being published provided for a hearing on July 5, 2022, at 3:00 p.m. Alderman Pierce moved that the Board approve the hearing on the matter being held July 5, 2022, at 3:00 in the Boardroom of Town Hall, 909 River Road, Tunica. Alderman Turner seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted.

The Board of Aldermen next discussed and considered receiving the fully executed Memorandum of Agreement for MDOT TAP Grant. Alderman Fullilove moved receive and accept the fully executed Memorandum of Agreement for the MDOT TAP Grant. Alderman Pierce seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted.

APPENDIX B – MEMORANDUM OF AGREEMENT –MDOT – TAP Grant

The Board of Alderman considered and discussed moving Public Works employee Christopher Newell from the sewer department to the street department. Alderman Pierce moved to transfer Christopher Newell from the sewer department to the street department. Alderman Hartsfield seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted.

The Mayor and Board of Alderman next considered and discussed placing a speed sign on Magnolia Street to help slow motorist down. There is a speed sign currently located on River Road and can be moved to Magnolia depending on the cost to purchase another sign. Alderman Turner made a motion for the Mayor to be authorized to either have an additional speed sign purchased and installed on Magnolia Street, or to relocate the speed sign on from River Road to Magnolia Street. Alderman Fyfe seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Alderman present, the Mayor declared the same carried and adopted.

The Mayor and Board next discussed and considered the following official travel requests:

- Preservation Commission to attend any one of the training sessions and travel expenses. Training is required for all members and must be completed by September 30, 2022.
 - Regional Training 1: Indianola-Tuesday, August 2, 2022, 9am-12pm
 - Regional Training 4: Oxford-Tuesday, August 23, 2022, 10am-1pm
- Kevin Hatton and all of the police officers to attend the Mississippi Law Enforcement Symposium July 20, 2022, at the Battle Arena.
- Mary Green to attend 2022 MML Annual Conference in Biloxi, MS June 26-30, 2022.

Following a discussion of the travel and a finding that the best interest of the Town will be served and benefited from the educational opportunities afforded to the those traveling, Alderman Hartsfield moved that the reference travel request be approved. And, to the extent requested, a travel advance shall be made as authorized by law. Alderman Fullilove seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted.

The Mayor and Board of Aldermen next considered holding an Executive Session, as authorized pursuant to Section 25-41-7, Mississippi Code of 1972, as amended. Alderman Pierce moved that a closed determination be held to discuss whether an executive session is needed to be held and is appropriate. Alderman Fullilove seconded the motion. Thereupon, the matter was put to a vote with the results as follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of the Town of Tunica, the Mayor declared the motion carried and the Mayor and Board held a closed determination on the issue of whether an executive session is necessary. Mayor Dulaney stated that the purpose for holding the executive session would be to discuss specific individuals namely the Town Clerk and Operation Manager, as well as the acquisition of right of real property. (the “Executive Session Matter”).

Based on this, Alderman Turner moved that the Mayor and Board of Aldermen hold an executive session to discuss, consider and act on the Executive Session Matter. Alderman Fyfe seconded the motion. The matter was put to a vote with the result as follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of Tunica, the Mayor declared the same carried and the Board entered executive session to consider the Executive Session Matters. Present during the executive session were the Mayor and all members of the Board of Aldermen.

The Board discussed the job perform, duties and responsibilities of Kate Scott Pennock and Thomas J. Robinson. Mayor Dulaney advised that over the course of the last 12 months, the Town has aggressively pursued and applied for several grants. The Town has been successful

on several of these agreement applications. In addition to other grants which the Town is pursuing, the Town has been awarded a DRA Grant and a MDOT – TAP Grant. These grants have placed additional job duties and responsibilities on Ms. Pennock and Mr. Robinson. Mayor Dulaney advised that both have worked extremely hard on each of grants. As the Town moves forward on administering these grants and having the work implemented, he recommended that Ms. Pennock and Mr. Robinson's salaries each be increased \$3,000 annually beginning July 1, 2022, through June 30, 2023, to recognize and compensate them for the additional job duties and responsibilities that they have and will continue to have while these grants are being administered and the projects constructed. Following the recommendation, Alderman Fyfe moved that the recommendation be accepted and that Mr. Robinson and Ms. Pennock's annual salaries each be increased \$3,000 beginning July 1, 2022, through June 30, 2023, to compensate them for the additional job duties and responsibilities associated with the various grants that the Town been awarded. Alderman Fullilove seconded the motion. The matter was put to a vote with the result as follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of Tunica, the Mayor declared the same carried, adopted and approved.

The Board of Aldermen next discussed the acquisition of real property and/or right of way. Mayor Dulaney discussed the possible acquisition of real property and/or right of way along the old railroad from the Veteran's Park south to the tennis courts and then east to School Street. Following the discussion, Alderman Pierce moved that Mr. Ryals be approved and hired to be paid additional compensation to provide the necessary services for the acquisition of the right of way. Alderman Hartsfield seconded the motion. The matter was put to a vote with the result as follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of Tunica, the Mayor declared the same carried, adopted and approved.

Following the discussion, Alderman Fullilove moved to leave executive session. Alderman Turner seconded the motion. The matter was put to a vote with the result follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of Tunica, the Mayor declared the same carried and the Board ended the executive session and returned to open meeting. Mayor Dulaney announced the actions that were taken during executive session.

Mayor Dulaney next stated that he would like to briefly address legal holidays of the State of Mississippi. Section 3-3-7 of the Mississippi Code of 1972, as amended, provides that the Town (any local government in Mississippi) may take certain holidays and the employees are

paid for the legal holiday. Juneteenth has been declared a federal holiday. The Town of Tunica has the option of “trading” one legal holiday day for another day of local importance. Historically, the Town, like Tunica County, has traded the last Monday of April in order to take Good Friday as a holiday. This year many more businesses as well as the federal government, banks, etc. took Juneteenth as a holiday. Mayor Dulaney discussed the matter with Mr. Ryals, the Attorney General’s office, MML and other mayors. He was advised that the Town could not legally take it as a holiday this year. Understanding the importance of the holiday, the Board requested that Mayor Dulaney communicate with the Town’s legislative delegation on the issues caused by the inconsistency in Mississippi law and federal law with a request that Mississippi law be made consistent with federal law on this issue.

With there being no other business, Alderman Turner moved to adjourn the meeting. Alderman Pierce seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted, and the meeting adjourned this 17th day of June, 2022.

Andrew T. Dulaney, Mayor

ATTEST:

Kate Scott Pennock, Town Clerk

APPENDIX A – ATTENDANCE SHEET

APPENDIX B – MEMORANDUM OF AGREEMENT

**BOARD MEETING
ATTENDANCE SCHEDULE
3:00 P. M.
JUNE 21, 2022**

| NAME | EMAIL/ORGANIZATION |
|--------------------------|-----------------------|
| 1. <u>Vivian Shelton</u> | <u>cit</u> |
| 2. <u>RICHARD TAYLOR</u> | <u>TURKISH MUSEUM</u> |
| 3. <u>WILL MCELROY</u> | <u>TURKISH MUSEUM</u> |
| 4. _____ | _____ |
| 5. _____ | _____ |
| 6. _____ | _____ |
| 7. _____ | _____ |
| 8. _____ | _____ |
| 9. _____ | _____ |
| 10. _____ | _____ |
| 11. _____ | _____ |
| 12. _____ | _____ |
| 13. _____ | _____ |
| 14. _____ | _____ |
| 15. _____ | _____ |
| 16. _____ | _____ |

John Caldwell
Northern District Commissioner

James M. Turner
District 2 Engineer

P. O. Box 660
Batesville, MS 38606-0660
Telephone (662) 563-4541
FAX (662) 563-0138



Brad White
Executive Director

Brian D. Ratliff
Deputy Executive Director/Chief Engineer

Lisa M. Hancock
Deputy Executive Director/Administration

GoMDOT.com

June 6, 2022

Mayor Andrew Dulaney
Town of Tunica
PO Box 395
Tunica, MS 38676

RE: STP-0125-00(013)LPA 109167-701000
Old US HWY 61 Sidewalk
Tunica County

Dear Mayor Dulaney,

Please find enclosed an original MOA for the above referenced project. You may now proceed to step 2 of the project activation as outlined on page 12 of the Project Development Manual. If you intend to use the services of a Professional Consultant to complete step 2, the professional Consultant must be licensed in the State of Mississippi, have a certificate from the LPA Process Training and Certification that is not older than 2 years.

If you have any questions, please contact me at 662-563-4541.

Sincerely,

A handwritten signature in red ink, appearing to read "Brian Copeland", is written over a horizontal line.

Brian Copeland
District LPA Engineer

Cc:

File

Memorandum of Agreement
STP-0125-00(013)LPA 109167-701000
Old US HWY 61 Sidewalk
Town of Tunica

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

WHEREAS, the Commission has oversight responsibility and authority over federal funds that are available for local public agency projects; and

WHEREAS, the LPA intends to develop and construct a 10' sidewalk along Old US HWY 61 from Peabody Avenue to Beatline Road; (hereinafter referred to as the "Project"), and the Commission intends to allow the LPA access to available federal funds and manage the Project under the terms and provisions of this Memorandum of Agreement; and

WHEREAS, it is anticipated that approximately \$376,000.00 in federal funds (80% grant match and 20% local match) are available for the construction of the Project, and that the above mentioned federal funds may be rescinded if they are not obligated on or before December 31, 2023, and that the above funds are subject to normal rescissions and obligational limitations; and

WHEREAS, the LPA will be responsible for all Project costs over and above the maximum amount of federal funds allocated to the Project by the Commission;

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

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the Commission enter into this Memorandum of Agreement for the use of the currently available federal funds and any future federal funds that may be allocated to this Project, agree and covenant as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:

1. The LPA shall immediately designate a full time employee of the LPA as the Project Director, who will serve as the person responsible for completion of all phases of the Project and will coordinate all Project activities with the MDOT District LPA Engineer.

2. The LPA shall promptly follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are necessary for the Project including, but not limited to, project activation, reporting requirements for federal awards (including the single audit), consultant selection, necessary permits, environmental process, preliminary design, right-of-way acquisition, advertisement for and selection of a contractor, construction oversight, and project close out activities.
3. The LPA shall submit to MDOT four (4) complete sets of as-built plans in printed form and the original electronic files in a format that is compatible with Microstation prior to MDOT acceptance. Upon request, MDOT may waive this requirement for selected projects.
4. The LPA shall be responsible for all maintenance and operation of the Project during and after completion so that the federal investment in the Project is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of federal funds through all available legal actions.
5. The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.
6. The LPA agrees that if any act or omission 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.
7. In compliance with State Law, the LPA shall pay all payments owed to Contractors and Consultants according to the terms of the contract, and in all instances payments shall be made within forty-five (45) days from the day they were due and payable. MDOT reserves the right to withhold reimbursement until adequate proof of payment has been produced by the LPA.

Excepted from this requirement are payments to railroads for any work included in the Project. Payments to railroads, their consultants or contractors, for work included in the Project, may be made by MDOT, at its sole discretion. Payments made by MDOT to railroads, their consultants or contractors shall come from the funds obligated for the Project.
8. The LPA shall be solely responsible for payment of any and all funds required to complete the Project, over and above the available federal funds for the Project.
9. 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 Department of Revenue, 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.

10. The LPA will be required to acknowledge MDOT and FHWA in all public relations efforts for the Project including press releases, materials for groundbreakings, ribbon cuttings or other public events and any other public information or media resources by notifying the MDOT Public Affairs Division, via telephone at 601-359-7074 or by electronic mail at comments@mdot.ms.gov. At a minimum, the following example sentence should be included:

"This project was funded (partially) by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this Project.

11. The LPA agrees that if the Project is not kept upon a schedule that meets MDOT guidelines, then the funds allocated to the Project may be rescinded. If the Project funds are rescinded, then the LPA may be required to refund any amounts paid unto the LPA by MDOT. The MDOT guidelines are derived from Title 23, United States Code, Section 102(b) and Title 23, Code of Federal Regulations, Part 630.112(c)(2).

12. The LPA will be required to submit to the District LPA Engineer monthly progress reports through the Notice to Proceed for construction, which shall include, but not be limited to, the work that has been completed that month and the planned work for the upcoming month. The LPA will also provide a project progress schedule that will report project milestones and the target date for the LPA's request for Ad Authority. These project milestones are to be updated once any milestones are missed.

13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards to prevent fraud and overpayments. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.

14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this Project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.

15. The LPA, being classified as a lower tier participant in federal funding, certifies, by execution of this agreement, that neither it nor those individuals or entities with which it contracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

16. The LPA agrees that it will require that engineering plans prepared for the construction of the Project be signed and sealed by the professional engineer responsible

for preparation of the plans. This requirement applies to the engineer assigned to the Project by a consulting engineering firm under contract to the LPA, or to an engineer that is a full-time, or part-time employee of the LPA. Further, the LPA agrees that it is solely responsible for errors and omissions that occur during Project development or during construction, regardless of any review or oversight activity on the part of MTC/MDOT.

17. The LPA agrees that once construction of the Project has commenced, the LPA is responsible for the Project being completed according to the plans and specifications, addenda or supplemental agreement as amended. The LPA acknowledges and agrees that this responsibility continues after the federal funds provided through MDOT are exhausted.

B. THE COMMISSION WILL:

1. Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with MTC/MDOT and FHWA approval.
2. Approve permit applications that meet with MDOT standards that are necessary to allow the LPA access to the property of the Commission for the purposes of constructing the proposed transportation improvements. The Commission may enter into an appropriate agreement in its discretion.
3. Work with the LPA, through the District LPA Engineer, 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. The review and oversight conducted by MTC does not relieve the LPA from its full responsibility for the proper design and construction of the Project.
5. During the progress of the Project, assist the LPA in obtaining reimbursements of federal funding for any project cost that is eligible for reimbursement.
6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.
7. At its discretion, make payments directly to railroad companies, their consultants or contractors for work on railroads included in the Project. The payments made shall come from Project funds obligated for the Project.

ARTICLE II. GENERAL PROVISIONS

A. The Commission shall have the right to audit all accounts associated with the Project, and should there be any overpayment by the Commission to the LPA, the LPA agrees to refund any such overpayment within thirty (30) days of written notification. Should the LPA fail to reimburse the Commission, the Commission shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.

B. This Memorandum of Agreement shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice given by the LPA, shall not, however, cancel any contract made by the LPA that is to further the purpose of this agreement and that is underway at the time of termination. Any construction 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 contract. Additionally, funds may be suspended or terminated under the provisions of Section F of this Article.

C. It is understood that this is a Memorandum of Agreement and that more specific requirements for the development and construction of the transportation improvement Project 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. Should the LPA miss the obligation deadline set in this MOU, the Commission reserves the right to refuse to obligate funds for the Project.

E. The Executive Director of MDOT is authorized to withhold federal funds for the Project for failure of the LPA, its consultants, or its contractor to follow the requirements of the Standard Specifications for Road and Bridge Construction, latest edition, or the latest online LPA Project Development Manual.

F. Before federal funds are terminated, the LPA will be notified in writing by the Executive Director of the conditions that 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 set forth in the Director's notice, 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 day period.

G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the Project, then MDOT time may be charged to the Project. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the Project may increase.

ARTICLE III. NOTICE & DESIGNATED AGENTS

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

For Contractual Administrative Matters:

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

LPA:
Mayor Andrew Dulaney
Town of Tunica
PO Box 395
Tunica, MS 38676
Phone: 662-363-2432

For Technical Matters:

COMMISSION:
District LPA Engineer – District 2
MDOT
PO BOX 660
Batesville, MS 38606
Phone: (662) 563-4541
Fax: (662) 563-0138

LPA:
Thomas J. Robinson III
Town of Tunica
PO Box 395
Tunica, MS 38676
Phone: 662-363-2432

B. All notices given hereunder shall be by U.S. Certified Mail, return receipt requested, or by facsimile and shall be effective only upon receipt by the addressee at the above addresses or telephone numbers.

ARTICLE IV. RELATIONSHIP OF THE PARTIES

A. The relationship of the LPA to the Commission is that of an independent contractor, and said LPA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission by reason hereof. The LPA will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the Commission, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.

B. The Commission executes all directives and orders through the MDOT. The LPA executes all directives and orders pursuant to applicable law, policies, procedures and regulations. All notices, communications, and correspondence between the Commission and the LPA shall be directed to the designated agent shown above in Article III.

ARTICLE V. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

To the extent permitted by law, the Commission and the LPA agree that neither party nor their agents, employees, contractors or subcontractors, will be held liable for any claim, loss, damage, cost, charge or expenditure arising out of any negligent act, actions, neglect or omission caused solely by the other party, its agents, employees, contractors or subcontractors.

ARTICLE VI. MISCELLANEOUS

No modification of this Memorandum of Agreement shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Memorandum of Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK

ARTICLE VII. AUTHORITY TO CONTRACT

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

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

So agreed this the 17th day of May, 2022.

Town of Tunica



Mayor Andrew Dulaney


Attested:



(Appropriate clerk etc.)

So agreed this the 31 day of May, 2022.

MISSISSIPPI TRANSPORTATION COMMISSION
By and through the duly authorized
Executive Director



Bradley R. White
Executive Director
Mississippi Department of Transportation

Book 22, Page 556,