

May 5, 2003

MEMORANDUM OF AGREEMENT

Among the

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

And the

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

And the

MISSISSIPPI TRANSPORTATION COMMISSION

And the

**STATE OF MISSISSIPPI
MISSISSIPPI DEVELOPMENT AUTHORITY**

For the

**PLANNING, DESIGN, ENGINEERING AND CONSTRUCTION
OF THE OKHISSA LAKE ACCESS AND INTERIOR ROADS**

In the

**HOMOCHITTO NATIONAL FOREST
FRANKLIN COUNTY, MISSISSIPPI**

This Memorandum of Agreement ("Agreement") entered into by and among the United States Department of Transportation, Federal Highway Administration ("FHWA"), Eastern Federal Lands Highway Division ("EFLHD"), and Mississippi Division ("FHWA-MS"); the Mississippi Transportation Commission ("MTC"); Mississippi Development Authority ("MDA"); and the United States Department of Agriculture, Forest Service, ("FS"); collectively known as the "Parties," is for the purpose of establishing the roles, responsibilities, and procedures under which work shall be performed by the Parties to complete the planning, design, engineering, and construction of the Okhissa Lake access and interior roads (hereinafter referred to as the "Project") in the Homochitto National Forest, in Franklin County, Mississippi.

WHEREAS, the FY 1999 Omnibus Consolidated & Emergency Supplemental Appropriations Act (Public Law 105-277) authorized the construction of the Okhissa Lake, including construction of a dam and access roads around the proposed Lake, in Franklin County, Mississippi;

WHEREAS, an Environmental Impact Statement (EIS), dated June 8, 1998, has been completed for the construction of the Lake, Dam and development of the area within the Homochitto National Forest that includes construction of this Project;

WHEREAS, construction of the Dam began in October 2000, the dam is expected to be completed in early 2003, and the Okhissa Lake will be filled in early 2005;

WHEREAS, the Mississippi Legislature has approved \$1,250,000 million in State bond funds and the MTC has approved \$1,250,000 in Surface Transportation Program (STP) funds for the Project;

WHEREAS, the FS has approved \$2,500,000 from Agency appropriations to supplement the MTC and MDA funds for this Project;

WHEREAS, the FS will have the jurisdictional and maintenance responsibility for the Okhissa Lake and all other facilities within the Homochitto National Forest;

WHEREAS, the FS is authorized to enter into this Agreement pursuant to the authority contained in Title 16 USC §532-538 and 23 USC § 101 and 205, and the regulations issued there under by the Secretaries of Transportation and Agriculture. This Agreement also incorporates the public involvement, public hearing requirements of Title 23, Code of Federal Regulations (CFR), Section 771.111 and 40 CFR, Parts 1500-1508, other associated environmental review procedures under 23 CFR § 771, and applicable FS requirements;

WHEREAS, the MTC is a body corporate authorized under the laws of the State of Mississippi to enter into this Agreement, whose policies and directives are carried out through the Executive Director and other employees and officials of the Mississippi Department of Transportation;

WHEREAS, the MTC has the jurisdictional and maintenance responsibility for U.S. Route 98 in the State of Mississippi;

WHEREAS, the FHWA-MS is the Federal agency with administrative, financial and project implementation, and management oversight of the State of Mississippi's Federal-aid Highway Program;

WHEREAS, 23 U.S.C. §308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies;

WHEREAS, the FHWA and the MTC are authorized to enter into this Agreement pursuant to the authority contained in 31 U.S.C. §1535 and Miss. Code Ann. §65-1-1, *et seq.*

NOW, THEREFORE, pursuant to the authority contained in Public Laws 97-258 and 98-216, FY 1999 Omnibus Consolidated & Emergency Supplemental Appropriations Act (Public Law 105-277); the Economy Act, 31 U.S.C. §1535, and Miss. Code Ann. 65-1-1, *et seq*; the Parties in consideration of the mutual promises herein expressed, do hereby agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The EFLHD agrees to:

1. Act as a cooperating agency for the National Environmental Policy Act (NEPA) documentation and as the lead agency for project development;
2. Prepare a reevaluation of the EIS and forward to the FS for review and approval, incorporate all environmental commitments into the design, and ensure compliance with NEPA, the National Historic Preservation Act and Section 4(f) for the Project are met in accordance with Title 23;
3. Coordinate with the FHWA Office of Budget and Finance to provide reimbursable authority in FY 2003 totaling \$1,250,000 (less the State's cost to issue bonds) for the State bond funds provided by the MDA;
4. Ensure funds are expended in the following priority order:
 - a. Surface Transportation Program (STP) Funds.
 - b. Bond Funds.
 - c. FS Funds.
5. Perform planning, design, engineering, and construction services;
6. Administer all surveying, mapping and subsurface investigations necessary for final design activities;
7. Design the Project in accordance with applicable FS and American Association of State Highway Officials (AASHTO) standards and guides, and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, current edition, as amended;
8. The EFLHD will request written comments and concurrence from the FS for the following activities and/or products:
 - a. Preliminary plans, including alternatives.
 - b. Right-of-way plans, based on 35 percent design.
 - c. Plan-in-hand plans (70 percent plans).
 - d. Final plans, specifications, and estimate (95 percent plans).
 - f. Completed construction project.
9. Conduct design field reviews with FS and other appropriate agencies representatives attending;
10. Prepare necessary plans and highway easement deeds for federal lands transfer of property for US 98 improvements;
11. Prepare necessary documents for Coast Guard permit; permit for Section 404 of the Clean Water Act, 33 USC 1251, *et seq.*; Forest Service permits; and any construction permits required;

12. Procure and administer consulting services and construction contracts, including necessary construction inspections, as appropriate, in accordance with the Federal Acquisition Regulation (FAR), and the Transportation Acquisition Regulation (TAR);
13. Assume responsibility for the administrative settlement or adjudication of any claims arising from any contracts awarded by the EFLHD, in accordance with the FAR and TAR, and subject to the availability of funds; and
14. In the event that any funds provided for the purpose hereof are not utilized, to reimburse the appropriate agency.

B. The FHWA-MS agrees to:

1. Act as a cooperating agency for the project development;
2. Provide the STP funds for the Project; and
3. Approve the Federal lands transfer submitted by the MTC.

C. The MTC agrees to:

1. Act as a cooperating agency with regard to the project development;
2. Request from FHWA-MS funding not to exceed \$1,250,000 in STP funds to the EFLHD for the Project;
3. Provide a resolution to the MDA requesting bonds to be sold;
4. Provide a permit for improvements to US 98, including work on MTC right-of-way;
5. Review, approve, and process the highway easement deed for the federal land transfer associated with US 98; and
6. Upon successful completion of the Project in accordance with the approved plans and specifications, the MTC will accept the completed improvements to US 98 for maintenance.

D. The MDA agrees to:

1. Act as a cooperating agency with regard to the project development; and
2. Provide bonds, pursuant to Mississippi House Bill 1886, Chapter No. 532, in an amount not to exceed \$1,250,000 to the EFLHD for the Project on a reimbursable basis.

E. The FS agrees to:

1. Act as lead agency for the NEPA documentation, as a cooperating agency in the project development, and be responsible for guiding decisions associated with FS lands or where FS interests are involved;
2. Review and approve the reevaluation of the EIS and the impact of access roads based on more detailed plans in accordance with the NEPA;
3. Provide and transfer \$2,500,000 in FS funding for the design and construction of the Project to the EFLHD;

4. Expend an amount equal to or greater than the amount of funding provided by the State of Mississippi (\$2,500,000) for the Project. The estimated cost of the total project (two phases) is approximately \$8,000,000;
5. Participate in all design and construction activities and field reviews;
6. Review plans and highway easement deeds for the federal land transfer for improvements to US 98;
7. Review and approve the final plans, specifications, and estimates (PS&E) for advertisement of the Project;
8. Approve the final design standards for all improvements related to FS-owned rights-of-way;
9. Assist with necessary permits on FS-owned lands;
10. Participate in the final inspection; and
11. Upon completion, accept maintenance of all improvements made to FS-owned rights-of-way.

ARTICLE II: TERM OF AGREEMENT AND MODIFICATIONS

This Agreement shall be in force for a period of five (5) years from the date of the last approving signature, and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction (written acceptance) of all Parties.

The Agreement may be modified by written consent of all of the Parties to cover any questions that may arise subsequent to the date of this Agreement. The Agreement may be renewed for an additional term upon written consent of all parties.

All Parties to the Agreement will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation; and to participate in all meetings and field reviews relating to the Project.

ARTICLE III: DISBURSEMENT OF FUNDS

- A. For the STP funds, funding will be provided in accordance with the provisions of 23 U.S.C. §308. Funds availability will be determined based upon the funds received from the MTC. The EFLHD will forward a funding request by letter (identifying the specific project and activity) for EFLHD project development and construction activities for review and approval by both the MTC and the FHWA-MS. A Project Agreement, PR-2 (or similar State document), will be prepared and executed by the MTC and the project amount authorized under normal FHWA current billing procedures. The MTC will provide funds (Federal Share only) to the EFLHD. Forest Service funds will be used for the local match requirement. Copies of all funding activity documents will be furnished to the EFLHD. Upon completion of the Project, any surplus funds will be returned to the MTC.
- B. For FS funds, the FS shall transfer funds to the FHWA by a non-expenditure fund transfer. The FS shall submit form SF 1151, Non-Expenditure Fund Transfer, with the Department of Treasury to execute the transfer. Notification of the transfer and copies of the SF 1151 should be sent to the following FHWA addresses:

Federal Highway Administration
Office of Finance
Attention: Mr. Andrew Reid
400 7th Street, SW
Washington, DC 20590

Federal Highway Administration
Eastern Federal Lands Highway Division
Attention: Ms. Peggy DeWeese
21400 Ridgetop Circle
Sterling, VA 20166-6511

FS:

Finance Point of Contact: Ms. Debra Sheriff, National Forests in Mississippi
Telephone: 601-965-7391, Extension 199
Agency Location Code: 12-40-1100

EFLHD:

Finance Point of Contact: Ms. Patricia Mark, EFLHD Financial Specialist
Telephone: 703-404-6219
Agency Location Code: 69-05-0001
Memorandum of Agreement No. DTFH71-03-X-00012

- C. For MDA bond funds, the MDA will provide funds to the EFLHD on a reimbursable basis, not to exceed \$1,250,000 (less the State's cost to issue bonds). The EFLHD will forward quarterly billings (or less often as necessary) by letter to the MTC (Attention: Budget Director) for review. The MTC will forward the invoice to the MDA for payment. The MDA will forward payment directly to the EFLHD to Ms. Peggy DeWeese at the address shown in Item IIIB, above.

MDA:

Finance Point of Contact: Ms. Dusty Hinton, Manager, Financial Resource Division
Telephone: 601-359-3552

EFLHD:

Finance Point of Contact: Ms. Patricia Mark, EFLHD Financial Specialist
Telephone: 703-404-6219
Agency Location Code: 69-05-0001
Memorandum of Agreement No. DTFH71-03-X-00012

ARTICLE IV: KEY OFFICIALS AND CONTACTS

A. For the FHWA:

KEY OFFICIAL:

Mr. Andrew Hughes
Division Administrator
Mississippi Division
Federal Highway Administration
666 North Street
Jackson, MS 39202-3199
(601) 965-4215 (phone)
(601) 965-4231 (fax)
andrew.hughes@fhwa.dot.gov

CONTACT PERSON:

Ms. Maranda Hahn
Operations Engineer
Mississippi Division
Federal Highway Administration
666 North Street
Jackson, MS 39202-3199
(601) 965-4222 (phone)
(601) 965-4231 (fax)
maranda.hahn@fhwa.dot.gov

Ms. Melisa L. Ridenour, P.E.
Division Engineer
Eastern Federal Lands Highway Division
Federal Highway Administration
21400 Ridgetop Circle
Sterling, VA 20166-6511
(703) 404-6203 (phone)
(703) 404-6217 (fax)
melisa.ridenour@fhwa.dot.gov

Mr. Kenneth Atkins
Project Manager
Eastern Federal Lands Highway Division
Federal Highway Administration
21400 Ridgetop Circle
Sterling, VA 20166-6511
(703) 404-6307 (phone)
(703) 404-6217 (fax)
kenneth.atkins@fhwa.dot.gov

B. For the MTC:

KEY OFFICIAL:

Mr. Larry L. Brown
Executive Director
Mississippi Department of Transportation
P.O. Box 1850
Jackson, MS 39215-1850
(601) 359-7002 (phone)
(601) 359-7050 (fax)
lbrown@mdot.state.ms.us

CONTACT PERSON:

Mr. Jimmy Davis
Budget Director
Mississippi Department of Transportation
P.O. Box 1850
Jackson, MS 39215-1850
(601) 359-7026 (phone)
(601) 359-7050 (fax)
jdavis@mdot.state.ms.us

C. For the FS:

KEY OFFICIAL:

Mr. Robert T. Jacobs
Regional Forester
USDA Forest Service
Southern Region (R-8)
1720 Peachtree Road, NW
Atlanta, GA 30367
(404) 347-4177 (phone)
(404) 347-2399 (fax)
rjacobs@fs.fed.us

CONTACT PERSONS:

Mr. Jim Kozik
Highway Engineer
USDA Forest Service
Southern Region 8
1720 Peachtree Road, NW
Atlanta, GA 30367
(404) 347-2470 (phone)
(404) 347-2399 (fax)
jkozik@fs.fed.us

Mr. Gerry Farmer
Forest Supervisor
National Forests in Mississippi
100 W. Capital Street, Suite 1141
Jackson, MS 39269
(601) 965-4391 (phone)
(601) 965-5519 (fax)
gfarmer@fs.fed.us

Mr. Jeff Orr
Forest Engineer
National Forests in Mississippi
100 W. Capital Street, Suite 1141
Jackson, MS 39269
(601) 965-4391 (phone)
(601) 965-5519 (fax)
jorr01@fs.fed.us

D. For the MDA

Mr. Robert J. Rohrlack, Jr., CEcD
Executive Director
Mississippi Development Authority
Post Office Box 849
Jackson, MS 39205
(601) 359-3552 (phone)
(601) 359-3613 (fax)

Ms. Dusty Hinton
Manager, Financial Resources Division
Mississippi Development Authority
Post Office Box 849
Jackson, MS 39205
(601) 359-3617 (phone)
(601) 359-3619 (fax)
Dhinton@mississippi.org

ARTICLE V: TERMINATION

This Agreement will terminate when its five year term has expired or when all transfers of funds are completed and all work associated with this Agreement has been inspected and approved in writing by the Parties with written notification to the FHWA.

In case of the failure on the part of any Party to observe any of the conditions of the Agreement, any affected Party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination to all Parties, effective at the end of the thirty (30) day period.

ARTICLE VI: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties.

ARTICLE VII: LIABILITY

Each Party accepts full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law.

TORT CLAIMS: Any claim filed under the Federal Tort Claims Act (28 U.S.C. §2671 *et seq.* (1994)), alleging an injury during the performance of this Agreement, which may be traced to a Party, shall be received and processed by the Party having responsibility for the particular injury-causing condition.

ARTICLE VIII: REQUIRED AND STANDARD CLAUSES

- A. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available appropriations.
- B. **NON-DISCRIMINATION:** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §2000(d) *et. seq.*); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat.394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §6101 *et seq.*); and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age or sex.
- C. **ANTI-DEFICIENCY ACT:** Pursuant to 31 U.S.C. §1341, nothing contained in this Agreement shall be construed as binding any of the Parties to expend any sum in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
- D. **INTEREST OF MEMBERS OF CONGRESS:** Pursuant to 41 U.S.C. §22, "No member of Congress shall be admitted to any share or part of any contract or Agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon, except as otherwise provided for in that law.
- E. **LOBBY PROHIBITION:** The Parties shall abide by 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended Nov. 2, 2002, Public Law 107-273, Div. A., Title II, §205(b), 116 Stat.1778, which states:

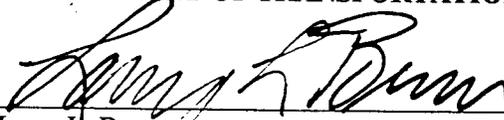
No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other devise, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of §1352(a) of Title 31.

F. This Agreement is subject to all laws governing Federal procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

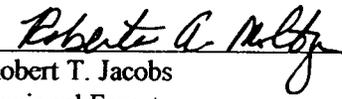
IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

MISSISSIPPI TRANSPORTATION COMMISSION
BY AND THROUGH THE EXECUTIVE
DIRECTOR OF THE MISSISSIPPI
DEPARTMENT OF TRANSPORTATION

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SOUTHERN REGION


Larry L. Brown
Executive Director

5-13-03
Date


Robert T. Jacobs
Regional Forester

5/12/03
Date

STATE OF MISSISSIPPI
MISSISSIPPI DEVELOPMENT AUTHORITY


Mr. Robert J. Rohrlack, Jr., CEcD
Executive Director

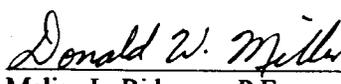
5/12/03
Date

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MISSISSIPPI DIVISION

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS
HIGHWAY DIVISION


Andrew Hughes
Division Administrator

5/13/03
Date


Melisa L. Ridenour, P.E.
Division Engineer

5/5/03
Date