

AGREEMENT OF UNDERSTANDING

BETWEEN

CITY OF JONESBORO

AND

THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

In Cooperation with the
U. S. Department of Transportation
Federal Highway Administration

RELATIVE TO

Implementation of Job 100681, Jonesboro SRTS I (2008) (hereinafter called "the Project") as an Arkansas Safe Routes To School Program project.

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users provides 100% Federal-aid funds for certain approved Arkansas Safe Routes To School Program projects, and

WHEREAS, the City of Jonesboro (hereinafter called "Sponsor") has expressed its desire to use Federal-aid funds for an eligible project, and

WHEREAS, the Sponsor knows of no legal impediments to the completion of the Project, and

WHEREAS, it is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create the public or any member thereof a third party beneficiary hereunder or to authorize anyone not a party to this agreement to maintain a suit or action for injuries or damage of any nature pursuant to the terms or provisions of this agreement.

WHEREAS, it is understood that the Sponsor and the Arkansas State Highway and Transportation Department (hereinafter called "the Department") will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantaged Business Enterprises (DBEs) (Attachment A) and that, as part of these requirements, the Department may set goals for DBE participation in the project ranging from 0% to 100% that are practical and related to the potential availability of DBEs in desired areas of expertise.

IT IS HEREBY AGREED that the Sponsor and the Department in cooperation with the Federal Highway Administration, will participate in a cooperative program for implementation of the project and will accept the responsibilities and assigned duties as described hereinafter.

THE SPONSOR WILL:

1. Indemnify and hold harmless the Arkansas State Highway Commission, the Department its officers and employees from any and all claims, lawsuits, judgments, damages, costs, expenses and losses, including those arising from claims before the Arkansas Claims Commission or lawsuits brought in any other legal forum, sustained on account of the operations or actions for the City, including any act of omission, neglect or misconduct of said City. Further, the City, shall take no action to compromise the immunity from civil suits afforded the State for Arkansas, the State Highway Commission, Arkansas Code §19-10-305, and the 11th Amendment of the Constitution of the United States. This obligation of indemnification shall survive the termination or expiration of this Agreement.
2. Assure that its policies and practices with regard to its employees, any part of whose compensation is reimbursed from federal funds, will be without regard to race, color, religion, sex, disability, or national origin in compliance with the Civil Rights Act of 1964 and 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.
3. Before acquiring additional property, submit a letter to the Right-of-Way Division of the Department which either (1) stipulates the services relative to right-of-way acquisition, appraisal, relocation, and utilities that the Sponsor will assume or (2) requests that the Department handle some or all of these services. Acquisition of property must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (commonly referred to as the "Uniform Act"). **NOTE: Failure to notify the Department prior to initiating this phase of work may result in all project expenditures being declared non-participating in federal funds.**
4. Provide a copy of the registered deed or an appropriate certification stating the Sponsor's clear and unencumbered title to any right-of-way to be used for the project (See Attachment B).
5. Advertise for bids in accordance with federal procedures as shown in Attachment C. **Any costs incurred by the Sponsor prior to receiving Notice to Proceed from the Department are not eligible for reimbursement.**
6. Forward a copy of all addenda to the project during the advertisement to the Department.
7. After bids are opened and reviewed, submit a certification (Attachment D), including all items noted, to the Department and request concurrence in award of the contract.
8. Maintain accounting records to adequately support reimbursement with Federal-aid funds and be responsible for the inspection, measurement and documentation of pay items, and certification of all work in accordance with the plans and specifications for the project and for monitoring the Contractor and subcontractor(s) for compliance with the provisions of FHWA-1273, Required Contract Provisions, Federal-aid Construction Contracts, and Supplements.

9. Make payments to the contractor for work accomplished in accordance with the plans and specifications and then request reimbursement from the Department.
10. Upon completion of the project, provide proof of expenditures to the Department for reimbursement.
11. Submit change orders to the contract to the Department's Planning and Research Division for review and approval for program eligibility prior to execution.
12. Assure that its policies and practices with regard to its employees, any part of whose compensation is reimbursed from federal funds, will be without regard to race, color, religion, sex, national origin, age, or disability in compliance with the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, The Americans with Disabilities Act of 1990, as amended, and Title 49 of the Code of Federal Regulations Part 21 (49 CFR 21), Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.
13. Be responsible for the inspection and certification of all work in accordance with the plans and specifications for the Project and to retain all records relating to such inspections, certifications, any billing statements, and any other files necessary to document the performance and completion of the work. Such records shall be retained in accordance with the requirements of 49 CFR, Subtitle A, Part 18, Subpart C, Section 18.42 - Retention and access requirements for records. (See Attachment F).
14. Grant the right of access to Sponsor's records pertinent to this project and the right to audit by the Department and Federal Highway Administration officials.
15. Be responsible for 100% of all project costs incurred should the project not be completed as specified.
16. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.
17. Repay to the Department the federal share of the cost of any portion of this project if the Federal Highway Administration removes federal participation due to actions of the Sponsor, its agents, its employees, or its assigns, or the Sponsor's consultants or their agents. Such actions shall include, but are not limited to, federal non-participation arising from problems with design plans, construction, change orders, construction inspection, or contractor payment procedures. The Sponsor understands and agrees that the Department may cause necessary funds to be transferred by the Director of the Department of Finance and Administration from any of the Sponsor's funds should the Sponsor fail to pay the Department any required funds, fail to complete the project as specified, or fail to adequately maintain or operate the project.
18. Repay all federal funds if for any reason the Federal Highway Administration should determine this is necessary.

19. Retain total, direct control over the project throughout the life of the improvements and **not, without prior approval from the Department:**
 - sell, transfer, or otherwise abandon any portion of the project;
 - change the intended use of the project as stated in the approved project application;
 - make significant alterations to any improvements constructed with Federal-aid funds;
or
 - cease maintenance or operation of the project due to the project's obsolescence.
20. Be responsible for satisfactory maintenance (including reasonable snow removal efforts) and operation of all improvements and for adopting regulations, ordinances and procedures as necessary to ensure this. Failure to adequately maintain and operate the project in accordance with Federal-aid requirements may result in the Sponsor's repayment of federal funds and will result in withholding future Federal-aid.
21. Promptly notify the Department if the project is rendered unfit for continued use.
22. After the Department issues a Notice to Proceed, advertise for bids in accordance with federal procedures as shown in Attachment F.
23. Conduct surveys of affected students to determine modes of school transportation and potential barriers to walking and bicycling. The survey devices will include a one-week classroom oriented session run by school faculty and a take-home survey to be completed with a child's parent. Completed surveys will be turned in to the Department for tabulation. Both devices will be provided by the Department.

THE DEPARTMENT WILL:

1. Be responsible for administering Federal-aid funds.
2. Provide environmental documentation for the project.
3. Provide plans and specifications and bidding documentation for the project.
4. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
5. Issue Notice to Proceed to the Sponsor when to proceed with advertisement of the project for construction bids.
6. Review bid tabulations and concur in award of the construction contract for the project.
7. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
8. Review and approve any necessary change orders for project/program eligibility.
9. Reimburse the Sponsor for all eligible construction costs.

10. Provide Sponsors with school transportation surveys to be conducted by the Sponsor and tabulate results of the surveys.

IT IS FURTHER AGREED that should the Sponsor fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure will disqualify the Sponsor from receiving future Federal-aid funds administered by the Department.

IT IS FURTHER AGREED that should the Sponsor fail to pay to the Department any required funds due for implementation of the project or fail to complete the project as specified in this Agreement or fail to adequately maintain or operate the project, the Sponsor hereby authorizes the Director of the Department of Finance and Administration to transfer from any of the Sponsor's State funds to the Department's RRA account such sums as the Director of Highways and Transportation shall certify as due the Department under terms of this Agreement.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement on this _____ day of _____ 20_____.

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation (Department) complies with the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and other federal equal opportunity laws and therefore does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in Department programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to James B. Moore, Jr., Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P.O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: james.moore@arkansashighways.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

**GENERAL REQUIREMENTS
FOR
RECIPIENTS AND SUB-RECIPIENTS
CONCERNING DISADVANTAGED BUSINESS ENTERPRISES**

It is the policy of the U. S. Department of Transportation that disadvantaged business enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

The recipient or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

If as a condition of assistance the recipient has submitted and the Department has approved a disadvantaged business enterprise affirmative action program, which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the Department shall impose such sanctions as noted in 49 CFR Part 26, Subpart F, which sanctions may include termination of the Agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance.

The recipient shall advise each sub-recipient, contractor or subcontractor that failure to carry out the requirements set forth in 49 CFR Part 26, Subsections 26.101 and 26.107 shall substitute a breach of contract and after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

(NOTE: Where appropriate, the term "recipient" may be modified to mean "sub-recipient", and the term "contractor" modified to include "subcontractor".)

GUIDELINES FOR ADVERTISING AND OPENING BIDS FEDERAL-AID PROJECTS

Upon receipt of written authorization from the Arkansas State Highway and Transportation Department, the project may be advertised for bids. The following minimum guidelines for advertising must be met:

- The minimum advertising period is three weeks.
- In addition to meeting the State requirements for advertising for construction projects, the project must be advertised a minimum of two times in a statewide newspaper.
- The notice must contain: (1) the time, date, and place that sealed bids are to be accepted, opened, and publicly read; (2) a brief description of the kind or type of work contemplated; and (3) the place at which prospective bidders may obtain plans and specifications.
- The Sponsor will include the following language in the solicitation for bids:

“The Sponsor hereby notifies all bidders that this contract is subject to applicable labor laws, non-discrimination provisions, wage rate laws and other federal laws including the Fair Labor Standards Acts of 1938. The Work Hours Act of 1962 and Title VI of the Civil Rights Act of 1964 also apply.”
- All bids received in accordance with the terms of the advertisement shall be publicly opened and at a minimum, the total amount bid must be read (the sponsor may choose to read the bids item by item).
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting.
- In accordance with 23 CFR 635.110, any procedures and requirements for qualifying and licensing contractors must be approved by the Federal Highway Administration.
- **Negotiation with contractors during the period following the opening of bids and before the award of the contract is not permitted.**

CERTIFICATION LETTER
REQUESTING CONCURRENCE IN AWARD OF THE CONTRACT

DATE

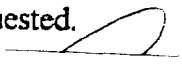
Mr. Frank Vozel
Deputy Director and Chief Engineer
Arkansas State Highway and Transportation Department
P. O. Box 2261
Little Rock, AR 72203

Re: Job #
Job Name
County

Dear Mr. Vozel:

I certify that the referenced project was advertised and bids were received in accordance with the regulations governing Federal-aid projects and all other applicable state and federal regulations, and that this process has been reviewed and approved by the City Attorney. Additionally, I certify that the bid is being awarded to the lowest responsive and qualified bidder and that there has not been, nor will there be, any negotiations with the contractor or other bidders regarding the amount bid.

Enclosed are one set of bid tabulations for the referenced project.

Your concurrence in the award of this contract to CONTRACTOR is requested. 

Enclosures

49 CFR 18.42

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Post-Award Requirements

Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see Sec. 18.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period--*(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report

income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records--*(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

ARKANSAS TRANSPORTATION ENHANCEMENT PROGRAM PROCEDURES FOR SPONSOR CONTRACTED PROJECTS

1. Project application submitted by Sponsor
2. Project applications reviewed by Arkansas State Highway and Transportation Department (AHTD) staff
3. Arkansas Highway Commission selects projects for funding approval
4. Approval letters sent to Sponsors by Highway Commission
5. Sample Resolution sent by AHTD Director
6. Certified copy of Resolution submitted to AHTD
7. AHTD meets with Sponsor and/or representative to discuss project details
8. Job name and number assigned by AHTD's Programs and Contracts Engineer
9. Agreement of Understanding forwarded to Sponsor
10. Signed Agreement returned and executed by AHTD Director
11. Sponsor contacts Arkansas Historic Preservation Program *(see Attachment B)*
12. Environmental handling by AHTD initiated
13. Sponsor's Registered Engineer/Architect prepares plans, specifications and estimate (PS&E)
14. Upon completion of environmental handling, right-of-way acquisition (if required) initiated by Sponsor
15. Sponsor submits letter certifying the ownership *(see Attachment C)*
16. Department certifies right-of-way based on Sponsor's documentation
17. Bid proposal developed by Sponsor *(see Attachment D)*
18. **Sponsor submits letter certifying that the PS&E was prepared by a registered professional and encloses the final PS&E and bid proposal** *(see Attachment E)*
19. Plans and specifications reviewed for project/program eligibility by AHTD
20. Construction funding authorized by FHWA (AHTD submittal)
21. **Sponsor given approval by AHTD to advertise project for construction bids**
22. Sponsor advertises for construction bids *(see Attachment F)*
23. During advertising period, Sponsor forwards copies of all addenda to the project to AHTD
24. Sealed bids received by Sponsor and opened at public meeting
25. **Sponsor submits letter to AHTD certifying the advertisement and bid opening process with the following enclosures: Bid tabulations, 1% AHTD administration fee, and request for concurrence in bid award by AHTD Chief Engineer** *(see Attachment G)*
26. **Sponsor executes contract upon notification of concurrence by AHTD Chief Engineer**
27. Project Agreement Estimate prepared by AHTD and submitted to FHWA
28. Construction allotment issued by AHTD
29. Sponsor issues Work Order to the Contractor
30. Preconstruction conference held by Sponsor to discuss work with Contractor; **AHTD Resident Engineer must be invited**
31. Construction begins
32. Sponsor inspects, **using AHTD Work Performed Sheets**, and makes progress payments to the Contractor
33. Sponsor submits request for reimbursement for work completed and certifies work was performed in accordance with plans and specifications to AHTD Resident Engineer *(see Attachment H)*
34. AHTD Resident Engineer visually verifies work has been performed and AHTD reimburses Sponsor for 80% of expenditures up to approved Federal-aid amount
35. **Sponsor submits executed copy(ies) of all Change Orders to AHTD for approval**
36. Current billing to FHWA processed by AHTD
37. Final inspection conducted by Sponsor and/or their representative
38. Final Estimate prepared by Sponsor
39. Final Voucher prepared by AHTD and submitted to FHWA
40. Final Allotment prepared by AHTD to close project
41. AHTD notifies Sponsor that project has been closed
42. Sponsor maintains all project records at least three years after project close out *(see Attachment I)*