

**AGREEMENT OF UNDERSTANDING**

**BETWEEN**

**THE 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

The replacement of **Bridge Number M2411 over Christian Creek on West Matthews Avenue in Jonesboro** (hereinafter called "the project") utilizing Federal-aid Highway Bridge Program funds.

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides 80% Federal-aid funds to be matched with 20% non-federal funds (cash match) for certain bridge replacement and rehabilitation projects, and

WHEREAS, the City of Jonesboro (hereinafter called the "City") has expressed its desire to use Federal-aid funds for an eligible project and to provide necessary matching cash share for such funds, and

WHEREAS, each project phase will be funded as follows:

	Maximum <u>Federal %</u>	Minimum <u>City %</u>	
Preliminary Engineering:	80	20	
Right-of-Way:	80	20	
Utilities:	80	20	
Construction:	80	20	
Construction Engineering:	80	20	; and

WHEREAS, it is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions or any part of the agreement to make 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, and

WHEREAS, the City understands that the Arkansas State Highway and Transportation Department (hereinafter called "Department") will adhere to the General Requirements for Recipients and Sub-recipients Concerning Disadvantaged Business Enterprises as stated on Attachment A,

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

THE CITY WILL:

1. Upon request, submit to the Department 5%, up to a maximum of \$35,000, of the estimated project cost before preliminary engineering by the Department begins.
2. Be responsible for 20% of the cost of preliminary engineering, construction, construction engineering, appraisal and acquisition of right-of-way, relocation services (when required), and adjustment of all man-made improvements, including utilities. **NOTE: The Maximum amount of Federal funding available for this project is \$1 million.**
3. Submit a letter to the Right of Way Division of the Department that either (1) stipulates the services relative to right-of-way acquisition, appraisal, relocation, and utilities that the City will assume or (2) requests that the Department handle some or all of these services.
4. Be responsible for 100% of all preliminary engineering, right-of-way, and other costs incurred should the City not enter into the construction phase of the project.
5. Repay to the Department the federal share of the cost of this project if for any reason the Federal Highway Administration removes federal participation.
6. Submit to the Department the local matching share of the total estimated cost before the project is awarded to contract.
7. Be responsible for any and all expenditures which may be declared non-participating in federal funds, including any such awards by the State Claims Commission.
8. Be responsible for satisfactory maintenance and operation of all improvements on the project. Failure to adequately maintain and operate the facility in accordance with Federal-aid requirements will result in withholding future Federal-aid highway funds.
9. Make no alterations to the improvements constructed with Federal-aid funds without first consulting with the Department.
10. Maintain or adopt regulations and ordinances as necessary for proper operation of the improvements and be responsible for the necessary enforcement of operations as required by improvements to city streets.
11. 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 of 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 of Arkansas, the State Highway Commission, Arkansas Code 19-10-305, or the 11th Amendment of the United State Constitution. This obligation of indemnification shall survive the termination or expiration of this Agreement.
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 Title VI of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, The Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act, FHWA

Highway Bridge Program Guidance, and Title 49 of the Code of Federal Regulations Part 21 (49 CFR 21), Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, and any other Federal, State, and/or local laws, rules and/or regulations.

13. Be responsible for all costs not provided by the Federal Highway Administration.

THE DEPARTMENT WILL:


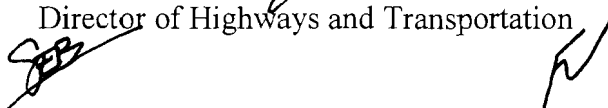
1. Be responsible for administering Federal-aid funds and for project construction supervision.
2. Be responsible for preparing plans and specifications for this project.
3. When requested, provide the necessary services relative to right-of-way acquisition, appraisal, relocation, and utility adjustments and will be reimbursed for costs involved in performing these services.

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

IT IS FURTHER AGREED, that should the City fail to pay to the Department any required funds due for project implementation or fail to complete the project as specified in this Agreement, the Department may cause such funds as may be required to be withheld from the City's gasoline tax allotment.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement this 4<sup>th</sup> day of April, 2010.

ARKANSAS STATE HIGHWAY  
AND TRANSPORTATION DEPARTMENT

  
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Dan Flowers  
Director of Highways and Transportation  


ARKANSAS STATE HIGHWAY  
AND TRANSPORTATION DEPARTMENT

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation Department complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in the admission, access to and treatment in Department's 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](mailto: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".)