

AGREEMENT OF UNDERSTANDING

BETWEEN

JONESBORO PARKS DEPARTMENT

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 100669, Turtle Creek Greenway (Phase III) (hereinafter called "the project") as a recreational trail development or improvement project.

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides 80% Federal-aid funds for certain recreational trail projects, and

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

WHEREAS, funding participation for each phase of the project will be as follows:

	<u>Federal %</u>	<u>Sponsor %</u>	
Project Design:	-0-	100%	
Project Inspection	-0-	100%	
Project Implementation:	80%	20%	, 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, and

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. Hold harmless the Department from all suits, actions, or claims of any character brought because of any damage sustained on account of the operations or actions of the said Sponsor; or because of any act of commission, omission, neglect of said Sponsor, or from any claims or amounts arising out of any act of commission, omission, neglect, or misconduct of said Sponsor or that is recovered under any law, ordinance, order or decree. The Sponsor and the Department shall at all times use their best efforts to protect the immunity from civil suits afforded the State of Arkansas and its several Agencies, Commissions and Departments as mandated by Article 5, § 20 of the Constitution of Arkansas, Ark. Code Ann. § 19-10-305, and the 11th Amendment of the Constitution of the United States.
2. The sponsor will comply with provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Recreational Trail Program Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

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.

3. Be responsible for its portion of the total project cost, which will include project design, construction inspection services, appraisal and acquisition of right-of-way, relocation services (when required), and adjustment of all man-made improvements, including utilities.
4. 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. And be responsible for the inspection and certification of all work in accordance with the plans and specifications for Job 110485 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.
5. Provide a copy of the registered deed or an appropriate certification, showing the Sponsor's clear and unencumbered title to any right-of-way to be used for the project.
6. Be responsible for 100% of all project costs incurred should the project not be completed as specified.
7. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.

8. 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.
9. 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.
10. Be responsible for satisfactory maintenance and operation of all improvements and for adopting regulations and ordinances 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.
11. Promptly notify the Department if the project is rendered unfit for continued use by an act of God or other cause.
12. Repay all federal funds if for any reason the Federal Highway Administration should determine this is necessary.
13. Complete all documentation necessary to obtain environmental, archeological, wetland and other clearances and transmit all necessary documentation pertaining to these clearances to the Department.
14. Construct the project in accordance to plans and specifications developed by the Sponsor, or the Sponsor's representative, and reviewed and approved by the Department prior to issuance by the department of a Notice to Proceed.
15. Notify the Department upon completion of various phases of the work in order that a Department representative may review the project before any payments for such work are made to the Contractor.
16. Refrain from any project construction for which the Sponsor expects monetary reimbursement until a Notice to Proceed is received from the Department.
17. Include all applicable federally required documentation in any contract entered into with third parties for construction services. Subject documentation will be provided by the Department. All such third parties whose work totals more than \$20,000 must be licensed by the Contractors' Licensing Board to perform work in Arkansas.
18. Provide the Department with all necessary documentation including a resolution of support from the Sponsor's governing body, approval from the State Historic Preservation Officer, proof of ownership, plans and specifications, and permits or rulings from the U.S. Army Corps of

Engineers, U.S. Fish and Wildlife Service, Environmental Protection Agency, or other applicable agencies within one calendar year of the date this Agreement of Understanding is signed by the Director of the Arkansas State Highway and Transportation Department. Extensions will not be granted. Funding for projects failing to provide this documentation will be withdrawn from this project and will be allocated to other eligible recreational trail projects.

THE DEPARTMENT WILL:

1. Be responsible for administering Federal-aid funds and for project approval and acceptance.
2. Review and approve environmental, archeological, wetland, or other necessary clearances.
3. Review plans and specifications for this project.
4. Conduct a final visual verification upon completion of the project.
5. Reimburse the Sponsor for all legitimate, documented costs in accordance with the final executed contract.
6. Provide the Sponsor with all applicable federal documentation to include in contracts entered into with third parties to provide construction services

IT IS FURTHER AGREED that should the Sponsor fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure may disqualify the Sponsor from receiving all 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__.

**ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT**

**JONESBORO PARKS
DEPARTMENT**

Dan Flowers
Director of Highways and Transportation