

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

Implementation of a **project to improve Race Street from Highway 49 to the east** (hereinafter called the "Project") utilizing Federal-aid Surface Transportation Program funds.

WHEREAS, funding in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) includes 80% Federal-aid funds to be matched with 20% non-federal funds for certain eligible projects; and

WHEREAS, the City of Jonesboro (hereinafter called "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, funding participation will be as follows, subject to the amount of Federal-aid funds available for the Project:

	<u>Maximum Federal %</u>	<u>Minimum City%</u>	
Preliminary Engineering by City:	0	100	
Preliminary Engineering by Department:	80	20	
Right-of-Way:	80	20	
Utilities:	80	20	
Construction:	80	20	
Construction Engineering:	80	20	; and

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

WHEREAS, the City has transmitted to the Arkansas State Highway and Transportation Department (hereinafter called the "Department") a signed and sealed Resolution from the City Council authorizing the Mayor to execute agreements and contracts with the Department for the Project; 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 has elected to perform preliminary engineering using 100% local funds; and

WHEREAS, the City understands that 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 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 a \$1,000 deposit (to be matched with \$4,000 Federal-aid) for costs associated with state preliminary engineering, which includes but is not limited to, on site meetings, environmental documentation, and plan and specification review. The City's final cost will be determined by actual Department charges to preliminary engineering.
2. Ensure that the plans and specifications are developed using the Department's standard drawings and the "Standard Specifications for Highway Construction (latest edition)".
3. Ensure that the plans and specifications comply with the Americans with Disabilities Act (ADA), the American Association of State Highway and Transportation Officials (AASHTO) design standards, and all other applicable state and federal regulations, including airport clearance when necessary, for the type of work involved.
4. Understand that **expenditures for preliminary engineering performed by the City's forces are not eligible for reimbursement with federal funds.**
5. Be responsible for 20% of the cost of State 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.**
6. 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. 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 any expenditures being declared non-participating in federal funds.**
7. Ensure the preparation of utility adjustment and right-of-way plans are in accordance with Arkansas Highway Commission Policy.
8. Provide a copy of the registered deed or an appropriate certification stating the City's clear and unencumbered title to any right-of-way to be used for the Project.

9. Submit a certification letter (Attachment B) including all items noted, to the Department when requesting that the Department advertise the Project for construction bids.
10. Prior to awarding the contract for construction, submit to the Department the City's 20% matching funds for construction and construction engineering. The City's final share of cost will be determined by actual Department charges.
11. Be responsible for all costs not provided by the Federal Highway Administration.
12. 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.
13. Repay to the Department the federal share of the cost of this Project if for any reason the Federal Highway Administration removes federal participation.
14. 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.
15. Make no alterations to the improvements constructed with Federal-aid funds without first consulting with the Department.
16. 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;
 - make significant alterations to any improvements constructed with Federal-aid funds; or
 - cease maintenance or operation of a project due to the Project's obsolescence.
17. 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 States Constitution. This obligation of indemnification shall survive the termination or expiration of this Agreement.
18. 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.

THE DEPARTMENT WILL:

1. Be responsible for administering Federal-aid funds and for project construction supervision.
2. Prepare the necessary environmental documentation as required by FHWA and conduct any required public involvement meetings and public hearings.
3. Review plans and specifications submitted by the Sponsor.
4. Be responsible for preparing bid proposals, advertising the project, receiving bids, and assembling the contract documents.
5. 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..
6. Be reimbursed for costs involved in performing all of the services listed above.

IT IS FURTHER AGREED that should the City fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure may 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 Motor Fuel Tax allotment.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement this _____ day of _____, 2012.

ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT

CITY OF JONESBORO

Scott E. Bennett
Director of Highways and Transportation

ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation Department (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 EEO/DBE Section Head (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: EEO/DBE_Section_Head@ahtd.ar.gov

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".)

CERTIFICATION LETTER
REQUESTING PERMISSION TO ADVERTISE

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:

The following documents are submitted concerning the referenced project:

1. One reproducible set of plans and specifications.
2. A copy of the engineer's estimate of cost.
3. Copies of any technical specifications or special provisions.

I certify that the plans, specifications and estimate were prepared by or under the direct supervision of a Professional Engineer licensed to practice in the State of Arkansas and that the plans and specifications were developed using with the Arkansas State Highway and Transportation Department's "Standard Specifications for Highway Construction (Edition of 2003)" and standard drawings, and comply with the Americans with Disabilities Act (ADA), the American Association of State Highway and Transportation Officials (AASHTO) design standards, and all other applicable state and federal regulations, including Airport Clearance when necessary, for the type of work involved. Additionally, I certify that all necessary right of way has been acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and arrangement for adjustment of existing conflicting utilities has been accomplished.

I understand that if any project items are declared non-participating in federal funds due to failure to comply with any State or federal requirements, the City will promptly repay such funds to the Arkansas State Highway and Transportation Department (AHTD). Further, I hereby authorize the Director of the Arkansas State Department of Finance and Administration to transfer such funds from the City's State Turnback Funds to the AHTD's RRA Fund upon notification by the Director of Highways and Transportation that such funds are due AHTD and have not been paid by the City.

Please proceed with advertisement of the project for bids.

Sincerely,

NAME
OFFICE

Enclosures