

**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 the **Crowley's Ridge Parkway: Jonesboro Multi-Use Trail** (hereinafter called the "Project") as a Federal-aid project.

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 approved National Scenic Byway projects; and

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

WHEREAS, funding participation will be as follows, subject to the maximum Federal-aid approved for the Project:

	<u>Federal %</u>	<u>Sponsor %</u>	
Project Design:	80	20	
Right-of-Way/Utilities:	80	20	
Construction:	80	20	
Construction Engineering by Consultant:	80	20	
Department Administrative Cost:	80	20	; and

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

WHEREAS, the Sponsor understands that the Arkansas State Highway and Transportation Department (hereinafter called the "Department") is willing to undertake all plan review, Project bidding and construction inspection subject to reimbursement by the Sponsor and within a time schedule established by the Department. However, the Sponsor desires to accept responsibility for all project phases in order to expedite project implementation; and

WHEREAS, it is understood that the Sponsor and the Department will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantage 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. Initially submit to the Department \$1,000 to be matched by \$4,000 (80%) Federal-aid National Scenic Byway project funds for Department administrative costs associated with state preliminary engineering, which includes but is not limited to, on site meetings, environmental review, and plan and specification review. The Sponsor's final share of cost for this phase will be determined by actual Department charges to preliminary engineering.
2. Be responsible for hiring a consultant engineering firm in accordance with the Local Agency Consultant Selection Procedures (Attachment B) to prepare plans, specifications, and a cost estimate for construction, and to provide construction engineering for the Project. **NOTE: FHWA authorization and Department approval must be given prior to issuing a work order to the consultant for federal funds to be allowed in this phase.**
3. Understand that **preliminary or construction engineering performed by the Sponsor is not eligible for reimbursement by federal funds.**
4. Conduct any necessary public involvement meetings and public hearings.
5. Ensure that the plans and specifications are developed using the Department's standard drawings and the Standard Specifications for Highway Construction (latest edition). A registered professional engineer must sign the plans and specifications for the Project.
6. Request review from the Arkansas Historic Preservation Program (AHPP) (See Attachment C). Then, forward AHPP's approval to the Department.
7. 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 (See Attachment D for items to be included in the bid proposal).
8. Make periodic payments to the consultant for design and construction engineering for the Project and request reimbursement from the Department.
9. 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.**
10. 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 E).
11. Submit a certification letter (Attachment F), including all items noted, to the Department when requesting authority to advertise the Project for construction bids.

12. Advertise for bids in accordance with federal procedures as shown in Attachment G.
13. Forward a copy of all addenda to the Project during the advertisement to the Department.
14. After bids are opened and reviewed, submit a certification (Attachment H), including all items noted, to the Department and request concurrence in award of the contract.
15. Prior to awarding the contract for construction, submit to the Department \$1,000 to be matched by \$4,000 (80%) National Scenic Byway project funds for Department administrative costs on the Project during construction. The Sponsor's final share of cost for this phase will be determined by actual Department charges for construction engineering.
16. Make payments to the contractor for work accomplished in accordance with the plans and specifications and then request reimbursement from the Department on the Construction Certification and Reimbursement Request form (Attachment I).
17. Submit change orders to the contract to the Department's Resident Engineer in charge of reimbursements for review and approval for program eligibility prior to execution.
18. Maintain and provide to the Department, a current list of all subcontractors for the Project which shows names, addresses, and a general description of work each is to perform.
19. Upon completion of the Project, submit the Final Construction Certification and Reimbursement Request form and certify that the Project was accomplished in accordance with the plans and specifications. (See Attachment I.)
20. 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.
21. Pay all unpaid claims for all materials, labor, and supplies entered into contingent or incidental to the construction of said work or used in the course of said work including but not limited to materials, labor, and supplies described in and provided for in Act Nos. 65 and 368 of 1929, Act No. 82 of 1935, and Acts amendatory thereof.
22. Ensure that all work, material testing and acceptance, and inspection is conducted in accordance with the Department's Standard Specifications for Highway Construction (current edition), Manual of Field Sampling and Testing Procedures, and Resident Engineer's Manual and the plans, specifications, and all other applicable FHWA and Department procedures for this Project.
23. 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 Sponsor, including any act of omission, neglect or misconduct of the Sponsor. Further, the Sponsor 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.

24. 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.
25. Retain all records relating to inspection and certification, the Contractor's billing statements, and any other files necessary to document the performance and completion of the work in accordance with requirements of 49 CFR 18.42 - Retention and access requirements for records (Attachment J).
26. 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.
27. Be responsible for 100% of all project costs incurred should the Project not be completed as specified.
28. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.
29. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Attachment K), which is necessary for project participation.
30. Repay to the Department the federal share of the cost of any portion of this Project if, for any reason, federal participation is removed due to actions or inactions of the Sponsor, its agents, its employees, or its assigns or the Sponsor's consultants or contractors or their agents. Such actions or inactions shall include, but are not limited to, federal non-participation arising from problems with design plans, specifications, construction, change orders, construction inspection, or contractor payment procedures. The Sponsor understands and agrees that the Department may cause necessary funds to be withheld from the Sponsor's gasoline tax allotment should the Sponsor fail to pay to the Department any required funds, fail to complete the Project as specified, or fail to adequately maintain or operate the Project.
31. Repay all federal funds if this is determined necessary for any reason.
32. 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 approved;
 - 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.

33. 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 may result in withholding all future Federal-aid.
34. Submit to the Department a Single Audit in accordance with the Office of Management and Budget (OMB) Circular A-133 each fiscal year that the Sponsor expends more than \$500,000 of Federal-aid from any federal source including, but not limited to, the U.S. Department of Transportation. The fiscal year used for the reporting is based on the Sponsor's fiscal year. The \$500,000 threshold is subject to change after OMB periodic reviews.
35. Promptly notify the Department if the Project is rendered unfit for continued use by natural disaster or other cause.

THE DEPARTMENT WILL:

1. Maintain an administrative file for the Project and be responsible for administering Federal-aid funds.
2. Review the proposed consultant contract for preliminary engineering and construction engineering, and obtain authorization from the Federal Highway Administration prior to approving the contract.
3. Upon receipt of the necessary documentation, reimburse the Sponsor 80% of the consultant costs.
4. Provide routine environmental documentation for the Project.
5. When requested, provide the necessary services relative to right-of-way acquisition, appraisal, relocation, and utility adjustments in accordance with the Uniform Act and be reimbursed for costs involved in performing these services.
6. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
7. Review plans and specifications for project/program eligibility.
8. Advise the Sponsor when to proceed with advertisement of the Project for construction bids.
9. Review bid tabulations and concur in award of the construction contract for the Project.
10. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
11. Review and approve any necessary change orders for project/program eligibility.
12. Reimburse the Sponsor 80% (Federal-aid share) for eligible costs up to the maximum Federal-aid amount as approved in the Construction Certification and Reimbursement Request form (Attachment I).
13. Pay the Sponsor the remaining amount due upon completion of the Project and submittal of the certified Final Construction Certification and Reimbursement Request form.

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 Department may cause funds as may be required to be withheld from the Sponsor's gasoline tax allotment.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement on this 22nd day of April, 2010.

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

CITY OF JONESBORO

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 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.