

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 100706, Turtle Creek Greenway Section V (hereinafter called "Project"), as a recreational trail development or improvement project.

WHEREAS, the Arkansas State Highway Commission has made available 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 subject to a limit of \$60,721 maximum Federal-aid approved for the project:

	<u>Federal %</u>	<u>Sponsor %</u>	
Project Design:	-0-	100%	
Utilities/Right of Way:	-0-	100%	
Project Inspection:	-0-	100%	
Project Construction:	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

WHEREAS, the Sponsor understands that the Arkansas State Highway and Transportation Department (hereinafter called "Department") will require the Sponsor to adhere to the General Requirements for Recipients and Sub-recipients Concerning Disadvantaged Business Enterprises as stated on Attachment A; 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. 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 said 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.
2. Request review from the Arkansas Historic Preservation Program (AHPP) (See Attachment B). Then, forward AHPP's approval to the Department.
3. 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 Trails 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.

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4. **Refrain from any Project construction for which the Sponsor expects monetary reimbursement until a Notice to Proceed is received from the Department.**
5. Be responsible for its portion of the total project cost, which will include project design, construction, construction inspection services, appraisal and acquisition of right-of-way, relocation services (when required), and adjustment of all man-made improvements, including utilities.
6. 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 C).
7. 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. 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. A statement in writing must be submitted to the Department when the Project is completed. The Sponsor shall retain **all records for three years** upon completion of the project. in accordance with the requirements of

49 CFR, Subtitle A, Part 18, Subpart C, Section 18.42 – (See Attachment D for retention and access requirements for records). The date of completion of the project will be construed as the check date of the final payment submitted to the Sponsor by the Department.

8. If the project is to be advertised, for bids, it must be done in accordance with State and Federal procedures as shown in Attachment E.
9. Prepare plans, specifications, and a cost estimate for construction. These plans will be reviewed by the Department at the Pre-Construction Conference and these records need to be maintained by the Sponsor for three years after the completion date of the project. A registered licensed professional engineer, architect, or landscape architect must sign the plans and specifications for the project for any project over \$25,000. For any project under \$25,000, the Sponsor's legal representative must countersign the plans. (See Attachment F for certification letter to be sent to the Department).
10. Submit a certification letter (Attachment G), including all items noted, to the Department when requesting authority to begin construction on the project.
11. Be responsible for 100% of any and all expenditures which are declared non-participating in Federal funds, including awards by the State Claims Commission.
12. Be responsible for 100% of all project costs incurred should the project not be completed as specified. 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.
13. Retain total, direct control over the Project throughout the life of the improvements and **not, without prior written 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.
14. 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 the withholding of future Federal-aid funds. 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.
15. Promptly notify the Department if the project is rendered unfit for continued use by natural disaster or other cause.
16. Repay all Federal funds if this is determined necessary for any reason.

17. Complete all documentation necessary to obtain environmental, archeological, wetland and other clearances and transmit all necessary documentation pertaining to these clearances to the Department.
18. Construct the Project in accordance to plans and specifications that were developed by the Sponsor, or the Sponsor's representative, and were reviewed and approved by the Department prior to the issuance of the Notice to Proceed.
19. 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. Once the Sponsor makes payments to suppliers and visible progress has been made toward the completion of the Project an on-site inspection of the Project may be requested by the Sponsor. No reimbursement will be made by the Department without an on-site inspection of the Project.
20. 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 without good cause and must be requested in writing to the Department. Funding for a project failing to provide this documentation will be withdrawn 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 the Project.
4. Advise the Sponsor when to proceed with construction of the Project.
5. Review and approve any necessary change orders for Project eligibility, regardless of funding source.
6. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
7. Reimburse the Sponsor for all legitimate, documented costs in accordance with the final executed contract.

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 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 19th day of February, 2010.

ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT

JONESBORO PARKS DEPARTMENT



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.

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