

**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 Jonesboro Transportation and Drainage Planning project, (hereinafter called "the project").

WHEREAS, the Consolidated Appropriations Act of 2004 includes Federal-aid funding for the project; and

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

WHEREAS, the Arkansas State Highway and Transportation Department (hereinafter called the "Department") is responsible for administering these Federal-aid funds; and

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

	<u>Federal %</u>	<u>City %</u>	
Section 115 Funding:	100	0	
Department Administrative Cost:	0	100	, and

WHEREAS, the City 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 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, it is understood that the City and the Department will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantaged 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 City and the Department, in cooperation with the Federal Highway Administration (FHWA), will participate in a cooperative program for implementation of the project and will accept the responsibilities and assigned duties as described hereinafter.

THE CITY WILL:

1. Transmit to the Department a signed and sealed Resolution from the City Council, which

supports the project and authorizes the Mayor or his designated representative to execute agreements and contracts with the Department for the project.

2. Initially submit to the Department \$5,000 for Department administrative costs.
3. Be responsible for hiring a consulting engineering firm in accordance with the City Procedures for Evaluation of the Qualifications of Prospective Consultants and Selection of Consultant Engineers (Attachment B) for the project. **NOTE: For Federal-aid funds to be allowed, FHWA authorization and Department approval must be given prior to issuing a work order to the consultant.**
4. Make payments to the consultant for work accomplished in accordance with the contract and then request reimbursement from the Department.
5. Submit change orders to the consultant contract to the Department for approval prior to execution.
6. Repay to the Department the federal funding of any portion of this project if, for any reason, federal participation is removed due to actions or inactions of the City, its agents, its employees, or its assigns or the City's consultants or contractors or their agents. The City understands and agrees that the Department may cause necessary funds to be withheld from the City's gasoline tax allotment should the City fail to pay to the Department any required funds, fail to complete the project as specified.
7. Maintain accounting records to adequately support reimbursement with Federal-aid funds.
8. Indemnify and hold harmless the Arkansas State Highway Commission, the Department and its officers and employees 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 City; or because of any act of omission, neglect, or misconduct of said City; or from any claims or amounts arising or recovered under any law, ordinance, order, or decree. The City and Department shall at all times protect as sacred the immunity from civil suits afforded the State of Arkansas and its several Agencies, Commissions and Departments, such as the Department, the Arkansas State Highway Commission, and the City, 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. Any claim awarded against the Arkansas State Highway Commission or the Department or its officers and employees for the above, including but not limited to, claims before the Arkansas State Claims Commission shall be borne by the City.
9. 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.
10. Retain all records relating to inspection and certification, the consultant'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 C).
11. Grant the right of access to City's records pertinent to this project and the right to audit by the

Department and FHWA officials.

12. Be responsible for 100% of all project costs incurred should the project not be completed as specified.
13. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.
14. Repay all federal funds if this is determined necessary for any reason.

THE DEPARTMENT WILL:

1. Be responsible for administering Federal-aid funds.
2. Review the proposed consultant contract and obtain authorization from the FHWA prior to approving the contract for this work.
3. Notify the City to issue a work order to the consultant upon approval by the FHWA.
4. Reimburse the City Federal-aid funds for eligible costs up to the maximum Federal-aid amount as approved. This reimbursement will be limited to the federal amount available for the project at the time payment is requested. If payment requested exceeds the Federal-aid available at the time, the difference will be reimbursed as additional Federal-aid for this project becomes available.

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 all future Federal-aid funds administered by the Department.

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 hereto have executed this Agreement on this 20th
day of December, 2004.

ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT

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".)

**CITY PROCEDURES FOR
EVALUATION OF THE QUALIFICATIONS OF
PROSPECTIVE CONSULTANTS AND SELECTION
OF CONSULTANT ENGINEERS**

Section I – Advertisement for Letters of Interest

When it has been determined that a need exists to perform engineering services for a specific project, the city may employ a consulting engineer or engineering firm.

The city will advertise in a statewide newspaper on a per job basis advising that consulting engineering services are being sought. This advertisement will generally describe the work so firms may evaluate their interest in performing the services. Those interested firms must furnish a letter of interest showing experience in similar work, resumes of key personnel, a general description of the firm, and must include a Form SF 254.

In lieu of the above, the city may, on some occasions, advertise a group of jobs at one time. The jobs will be advertised in the same manner and a general scope of work will be furnished. The consultants are requested to indicate the jobs they are interested in performing. When the city decides to proceed with a certain job, those firms having expressed interest will be considered.

Section II – Evaluation of Letters of Interest

A selection committee designated by the mayor will evaluate and analyze the letters of interest. The letters will be reviewed with regard to the following:

1. Adequate professional staff;
2. Education and experience of the staff;
3. General and professional reputation of the firm, including its responsiveness to civil rights and equal employment opportunities requirements;
4. Past performance evaluations for work with the city and experience with others for the kind of work involved in the project under consideration;
5. Availability of the firm—consideration will be limited to consultants who have or agree to establish a working office at a place acceptable to the city for availability for review and discussion of the work involved;
6. Work load—selection will be limited to consulting engineers having a work load that will enable them to complete the work in the allowable time;
7. Ability to expand—if the work exceeds the consulting firm's normal capacity, consideration may be given to the consulting firm's declared intention of expansion if it has a key personnel organization and is in an area where the availability of engineering technicians is known to exist;
8. Examples of work previously performed by the consultant on projects of a similar nature will be reviewed.

Following this review, the committee will recommend to the mayor those firms selected for submission of detailed proposals.

Section III – Request for Proposal

The firms selected (short listed) will be requested to submit a proposal for performing the work according to a scope of work provided, which will typically contain the following:

1. A detailed description of the work;
2. Services to be furnished by the city and others;
3. Services expected of the consultant;
4. Project conditions of the work;
5. Special conditions of the work;
6. Assurance of participation of a Disadvantaged Business Enterprise (DBE) in Federal-aid projects. The city may set aside a certain percentage of the work for DBEs to assure DBEs participation in Federal-aid projects. The city must use the Arkansas Highway and Transportation Department's (AHTD) list of certified DBE firms, which will be furnished upon request. When DBE requirements are specified, the city must ensure that a certified DBE perform at least the set aside percentage of the work and monitor payments to DBEs to ensure the percentage is reached. This set aside does not in any way preclude a DBE from being the prime consultant for the work.

The proposals submitted should contain the following:

1. A description of the firm;
2. A detailed work plan that identifies major concerns;
3. A detailed schedule of the work;
4. An organization chart showing key personnel by name;
5. Resumes of key personnel;
6. A manpower estimate required for performance of the work.

The proposals will be reviewed by a selection committee designated by the mayor with regard to the same items, among others, considered in Section II. Particular attention should be directed to the following:

1. Understanding of the work;
2. The detailed work plan;
3. The work schedule;
4. The local office and local representative;
5. The DBE firm and other sub-consultants.

Based on these various items, the selection committee will rank the firms in order of preference. The ranking will be submitted to the mayor, who will either (1) select one firm with which to enter negotiations or (2) select two or more firms to attend interviews

where they may present additional information concerning their proposals. If the recommendation is to conduct interviews, those firms will be advised and the interviews scheduled. The firms will be ranked as stated above and the rankings will be submitted to the mayor for selection. Records of the rankings and supporting data will be made part of the contract file; however, the rankings will not be public information.

Section IV – Negotiation and Contract Preparation

The selected firm will be asked to prepare a draft contract, including their cost estimate for the project. The firms on the short list will be advised of the firm selected, subject to successful negotiations.

The draft contract will be prepared based upon a sample contract furnished to the consultant and shall include overhead rates in accordance with the principles of 23 CFR 172. For contracts exceeding \$250,000 and for contracts less than \$250,000 where there is insufficient knowledge of the consultant's accounting system, where there is previous unfavorable experience regarding the reliability of the consultant's accounting system, or where the contract involves procurement of new equipment or supplies for which cost experience is lacking, the overhead rates will be verified through an audit by a certified public accountant on behalf of the consultant prior to signing the contract.

Prior to any negotiations, the project will be analyzed by the city and a fixed price estimate or cost reimbursable fee will be determined based upon the complexity of the problems, including the degree of risk, the relative difficulty of design, the size of the project, the details required, the period of performance, and previously negotiated consultant agreements. This estimated contract price must be documented in the city's records.

The city will review the contract proposal and approve it as submitted or enter into negotiations with the selected firm to establish a contract price which is fair and reasonable to the city. In the event that a satisfactory contract cannot be negotiated with the selected firm, negotiations will be formally terminated. The city will then enter into negotiations with the second ranked firm. If negotiations fail with that firm, the city will terminate those negotiations and begin negotiations with the third ranked firm, and so on. If the city cannot negotiate a satisfactory contract with any of the ranked firms, the mayor shall either (1) select additional firms in order of their competence and qualifications and continue negotiations, or (2) terminate all negotiations and begin the selection process again.

After final negotiations between the consultant and the city are completed and an agreement has been reached regarding the scope of the work, the professional services to be furnished by the consultant, the services to be furnished by the city and others, and the amount of the contract and method of payment, the final draft will be prepared by the consultant and submitted for review by the city and others. Upon completion of the review, the contract will be signed by the consultant and executed on behalf of the city by

the mayor. The contract will then be submitted to the AHTD for final review and approval. When approved, copies of the contract will be distributed to the city, the AHTD and the consultant.

Section V – Monitoring the Contract

The city will appoint a coordinator to administer the approved contract. The coordinator will:

1. Maintain files on the contract;
2. Arrange and attend periodic progress meetings;
3. Review progress payments;
4. Direct queries from the consultant to the appropriate city personnel or others for answers;
5. Negotiate any change(s) or amendment(s) to the contract;
6. Prepare an evaluation of the contract and the performance of the consultant upon completion of the contract, with input from other city personnel. A copy of the evaluation will be submitted to the consultant and the AHTD.

49 CFR 18.42

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Post-Award Requirements

Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see Sec. 18.36(i)(10).

(h) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period--(1) General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report

income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records--(1) Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.