

**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 100683, Turtle Creek Greenway (Phase IV) (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 \$29,000 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 11<sup>th</sup> 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](mailto:james.moore@arkansashighways.com).

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

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 29<sup>th</sup>  
day of April, 2009.

ARKANSAS STATE HIGHWAY  
AND TRANSPORTATION DEPARTMENT

JONESBORO PARKS DEPARTMENT

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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](mailto:james.moore@arkansashighways.com).

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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 applies 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".)

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DATE

Mr. George McCluskey  
Arkansas Historic Preservation Program  
1500 Tower Building  
323 Center Street  
Little Rock, AR 72201

Re: Arkansas Recreational  
Trails Project  
Job #  
Job Name  
County

Dear Mr. McCluskey:

The *(Sponsor Name)* .... proposes a recreational trail *project and location*.

*Describe the project.* A location map is enclosed.

*(enclose a map ..... a USGS 7.5 minute topographic quadrangle is preferred by SHPO)*

We appreciate any comments you may have regarding the handling of this project. If *(name the contact person for the sponsor and phone number)* ... can be of assistance in this activity, please let us know.

Sincerely,

NAME  
Sponsor's Name  
Office of Individual

Enclosure(s)

CERTIFICATION LETTER for RIGHT-OF-WAY OWNERSHIP

DATE

Mr. Alan Meadors  
Planning and Research Engineer  
Arkansas State Highway and Transportation Department  
P. O. Box 2261  
Little Rock, AR 72203

Re: Job #  
Job Name  
County

Dear Mr. Meadors:

Regarding right-of-way for the referenced recreational trail project, I certify that  
***(Choose one of the following)***

**(1)** title to right-of-way necessary for construction of the project is already in public ownership. No additional right-of-way is needed.

**(2)** title to a portion of the right-of-way necessary for construction of the project is already in public ownership. The additional right-of-way necessary for this project has been acquired in accordance with applicable Federal Highway Administration procedures as shown below.

# Tracts \_\_\_\_\_ # Paid \_\_\_\_\_ # Donations \_\_\_\_\_ # Condemnations \_\_\_\_\_

**(3)** title to right-of-way necessary for construction of the project has been acquired in accordance with applicable Federal Highway Administration procedures as shown below.

# Tracts \_\_\_\_\_ # Paid \_\_\_\_\_ # Donations \_\_\_\_\_ # Condemnations \_\_\_\_\_

Additionally, I certify that arrangement for adjustment of existing conflicting utilities has been accomplished. Enclosed are preliminary plans showing the existing right-of-way limits. ***(for No. 2 and 3 above, add the following)*** and the boundary of additional right-of-way needed for construction of this project.

Sincerely,

NAME & OFFICE  
(Sponsor's Name)

Enclosure(s)



# 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).

(b) *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.

**GUIDELINES FOR ADVERTISING AND OPENING BIDS  
FEDERAL-AID PROJECTS  
FOR GOODS, MATERIALS, OR LABOR TALLING \$25,000 OR MORE:**

Upon receipt of written authorization from the Arkansas State Highway and Transportation Department, the project may be advertised for bids. The following minimum guidelines for advertising must be met:

- The minimum advertising period is three weeks.
- In addition to meeting the State requirements for advertising for construction projects, the project must be advertised a minimum of two times in a statewide newspaper.
- The notice must contain: (1) the time, date, and place that sealed bids are to be accepted, opened, and publicly read; (2) a brief description of the kind or type of work contemplated; and (3) the place at which prospective bidders may obtain plans and specifications.
- The Sponsor will include the following language in the solicitation for bids:  
    “The Sponsor hereby notifies all bidders that this contract is subject to applicable labor laws, non-discrimination provisions, wage rate laws and other federal laws including the Fair Labor Standards Acts of 1938. The Work Hours Act of 1962 and Title VI of the Civil Rights Act of 1964 also apply.”
- All bids received in accordance with the terms of the advertisement shall be publicly opened and at a minimum, the total amount bid must be read (the sponsor may choose to read the bids item by item).
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting.
- In accordance with 23 CFR 635.110, any procedures and requirements for qualifying and licensing contractors must be approved by the Federal Highway Administration.
- Negotiation with contractors during the period following the opening of bids and before the award of the contract is not permitted.

**FOR GOODS, MATERIALS OR LABOR TALLING BETWEEN \$5,000 AND \$25,000 THEN A MINIMUM OF THREE BIDS MUST BE OBTAINED BY DIRECT MAIL, TELEPHONE, TELEGRAPH, INTERNET, OR IN WRITING.**

**FOR PURCHASES UNDER \$5,000, COMPETITION SHOULD BE USED TO THE MAXIMUM EXTENT PRACTICABLE.**

**Records of all quotes, bids, and invoices must be retained for three years. Invoice copies must be submitted for reimbursement purposes.**

CERTIFICATION LETTER  
REQUESTING CONCURRENCE IN AWARD OF THE CONTRACT

DATE

Mr. Alan Meadors  
Planning and Research Engineer  
Arkansas State Highway and Transportation Department  
P. O. Box 2261  
Little Rock, AR 72203

Re: Job #  
Job Name  
County

Dear Mr. Meadors:

The following documents are submitted concerning the referenced project:

1. One set of bid tabulations.
2. Justification of award (if low bid amount is greater than 10% over the estimate).

I certify that the referenced project was advertised and bids were received in accordance with the regulations governing Federal-aid projects and all other applicable state and federal regulations, and that this process has been reviewed and approved by the City Attorney. Additionally, I certify that the bid is being awarded to the lowest responsive and qualified bidder and that there has not been, nor will there be, any negotiations with the contractor or other bidders regarding the amount bid.

Your concurrence in the award of this contract to CONTRACTOR is requested.

Sincerely,

NAME & OFFICE  
(Sponsor's Name)

\_\_\_\_\_  
Sponsor's Attorney or Engineer/Architect

Enclosures

CERTIFICATION LETTER  
REQUESTING AUTHORITY TO BEGIN CONSTRUCTION

DATE

Mr. Alan Meadors  
Planning and Research Engineer  
Arkansas State Highway and Transportation Department  
P. O. Box 2261  
Little Rock, AR 72203

Re: Job #  
Job Name  
County

Dear Mr. Meadors:

The following documents are submitted concerning the referenced project:

1. One set of plans and specifications.
2. A copy of the preliminary estimate of cost.
3. An unexecuted copy of the bid proposal form.

I certify that the plans, specifications and estimate 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.

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 Sponsor 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.

Approval to proceed with construction of the project is requested.

Sincerely,

NAME & OFFICE  
(Sponsor's Name)

Enclosures