

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

Widening of Lawson Road from Highway 49 to Highway 1 (hereinafter called "the project")
utilizing Federal-aid Surface Transportation Program funds.

WHEREAS, the Transportation Equity Act for the Twenty-first Century provides 80% Federal-aid funds to be matched with 20% local funds (cash match) for improvements to eligible routes, 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, each project phase will be funded as follows:

	<u>Federal %</u>	<u>City %</u>
Preliminary Engineering:	80	20
Right-of-Way:	80	20
Utilities:	80	20
Construction:	80	20
Construction Engineering:	80	20

, 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 understands that the Arkansas State Highway and Transportation Department (hereinafter called "Department") will adhere to the General Requirements for Recipients and Sub-recipients Concerning Disadvantaged Business Enterprises as stated on the attachment,

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 5% of the estimated project cost before preliminary engineering by the Department begins.
2. Be responsible for 20% of the cost of 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.**
3. 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 City will assume or (2) requests that the Department handle some or all of these services.
4. 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.
5. Repay to the Department the federal share of the cost of this project if for any reason the Federal Highway Administration removes federal participation.
6. Submit to the Department the local matching share of the total estimated cost before the project is awarded to contract.
7. Be responsible for any and all expenditures which may be declared non-participating in federal funds, including any such awards by the State Claims Commission.
8. 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.
9. Make no alterations to the improvements constructed with Federal-aid funds without first consulting with the Department.
10. Maintain or adopt regulations and ordinances as necessary for proper operation of the improvements and be responsible for the necessary enforcement of operations as required by improvements to city streets.
11. 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 Sponsor; or because of any act of omission, neglect, or misconduct of said Sponsor; or from any claims or amounts arising or recovered under any law, ordinance, order, or decree. The Sponsor 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 Sponsor, 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 Sponsor.

12. 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.
13. Be responsible for all costs not provided by the Federal Highway Administration.

THE DEPARTMENT WILL:

1. Be responsible for administering Federal-aid funds and for project construction supervision.
2. Be responsible for developing the necessary plans and specifications for the project.
3. 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.

IT IS FURTHER AGREED that should the City fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure will 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 gasoline tax allotment.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement this _____ day of _____, 2003.

ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT

CITY OF
JONESBORO

Dan Flowers
Director of Highways and Transportation

Hubert Brodell
Mayor

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".)