

**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 **Job 100753, Jonesboro Phillips Dr. Streetscaping (ATEP-11) (S), F.A.P. STPE-ENHN(421)**, (hereinafter called the "Project") as a Federal-aid Transportation Enhancement project.

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) includes Federal-aid Transportation Enhancement funding; and

WHEREAS, the Arkansas State Highway Commission has made available 80% Federal-aid funds to be matched with 20% non-federal funds (cash match) for certain eligible transportation enhancement 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 share for such funds; and

WHEREAS, the Sponsor has transmitted to the Arkansas State Highway and Transportation Department (hereinafter called the "Department") a signed and sealed Resolution from the City Council authorizing the Mayor to execute agreements and contracts with the Department for the Project; and

WHEREAS, funding participation will be as follows, subject to a limit of \$300,000.00 maximum Federal-aid approved for the Project:

	Federal %	Sponsor %	
Project Design:	0	100	
Right-of-Way/Utilities:	80	20	
Construction:	80	20	
Construction Inspection:	0	100	
Department Administrative Cost (1% of Const. Amt.)	0	100	; and

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

WHEREAS, the Sponsor 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 area of expertise; 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.

IT IS HEREBY AGREED that the Sponsor 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 SPONSOR WILL:

1. Notify the Department in writing who the Sponsor designates as its full-time employee to be in responsible charge of the day to day oversight of the Project. The duties and functions of this person are:
 - Oversee project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
 - Maintains familiarity of day to day project operations, including project safety issues;
 - Makes or participates in decisions about changed conditions or scope changes that require change orders and/or supplemental agreements;
 - During construction, visits and reviews the project on a daily basis;
 - Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
 - Directs project staff, Sponsor or consultant, to carry out project administration and contract oversight, including proper documentation;
 - Be aware of the qualifications, assignments and on-the-job performance of the Sponsor and consultant staff at all stages of the project.
2. Request review from the Arkansas Historic Preservation Program (AHPP) (Attachment B). Then, forward AHPP's approval to the Department.
3. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer or licensed architect must sign the plans and specifications for the Project.
4. Before acquiring property, submit a letter to the Department's Right of Way Division 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.**
5. 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 (Attachment C).
6. Certify 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.)
7. Submit a certification letter (Attachment E), including all items noted, to the Department when requesting authority to advertise the Project for construction bids.

8. Advertise for bids in accordance with federal procedures as shown in Attachment F.
NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.
9. Forward a copy of all addenda to the Project during the advertisement to the Department.
10. After bids are opened and reviewed, submit a Certification Letter Requesting Concurrence in Award of the Contract (Attachment G), including all items noted, to the Department and request concurrence in the award of the contract.
11. Prior to issuing the notice to proceed to the Contractor, hold a pre-construction meeting with the Contractor and invite the Department's Resident Engineer assigned to the Project
12. Perform construction inspection in accordance with Attachment H.
13. 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 (CCRR) (Attachment I).
14. Attach LPA Report of Daily Worked Performed (Attachment J) with all CCRR submittals.
15. Maintain accounting records to adequately support reimbursement with Federal-aid funds and be responsible for the inspection, measurement and documentation of the 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.
16. Prior to executing the work, submit change orders to the contract to the Department's Resident Engineer assigned to the Project for review and approval for program eligibility.
17. Upon completion of the Project, hold a final acceptance meeting for the Project and submit the LPA Final Acceptance Report form certifying that the Project was accomplished in accordance with the plans and specifications (Attachment K). This form must be signed by the engineer/architect performing construction inspection on the Project, the Department's Resident Engineer assigned to the project, the Sponsor's full-time employee in responsible charge, and the Sponsor's CEO.
18. 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 State Constitution. This obligation of indemnification shall survive the termination or expiration of this Agreement.
19. 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.

20. 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.
21. 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 L).
22. Grant the right of access to the Sponsor's records pertinent to this Project and the right to audit by the Department and Federal Highway Administration officials.
23. Be responsible for its portion of the total project cost and 1% of the contract amount for Department administration.
24. Be responsible for 100% of all project costs incurred should the project not be completed as specified.
25. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.
26. 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 motor fuel 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.
27. 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.
28. Complete and transmit to the Department both pages of the Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements (Attachment M).
29. 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 the Project due to its obsolescence.

30. 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.
31. 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. Provide routine environmental documentation for the Project.
3. 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.
4. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
5. Review the plans and specifications for project/program eligibility.
6. Ensure substantial compliance with federal contracting requirements through review of the bidding proposal for inclusion of required federal forms, review of the administration of the DBE program provisions, and general compliance with 23 CFR 635.
7. Advise the Sponsor when to proceed with advertisement of the Project for construction bids.
8. Review bid tabulations and concur in the award of the construction contract for the Project.
9. Participate in the Sponsor's preconstruction meeting.
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. Participate in the Sponsor's final acceptance meeting.
13. Reimburse the Sponsor 80% (Federal-aid share) for eligible costs up to the maximum Federal-aid amount approved in the CCRR form (Attachment I). This reimbursement will be limited to the maximum Federal-aid amount approved for the Project. If the payment requested exceeds the Federal-aid available at the time, the difference will be reimbursed as additional Federal-aid for the Project becomes available.
14. Subject to the availability of Federal-aid allocated for the Project, pay the Sponsor the remaining amount due upon completion of the Project and submittal of the certified LPA Final Acceptance Report form (Attachment J).

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 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 Motor Fuel Tax allotment.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement on this 13th day of Dec, 2011.

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

CITY OF JONESBORO

Scott E. Bennett
Director of Highways and Transportation

**ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT**

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in the admission, access to and treatment in Department's 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.