

**AGREEMENT OF UNDERSTANDING
BETWEEN
THE [INSERT SPONSOR NAME]
AND
THE ARKANSAS DEPARTMENT OF TRANSPORTATION**

In Cooperation with the
U. S. Department of Transportation, Federal Highway Administration

RELATIVE TO

Construction of **[Insert Job Name and Number]** (hereinafter called the "Project") as a Federal-aid Transportation Alternatives Program (TAP) project.

WHEREAS, funding in the Fixing America's Surface Transportation (FAST) Act includes 80% Federal-aid funds to be matched with 20% non-federal funds for approved TAP projects; and

WHEREAS, the **[Insert Sponsor Name]** (hereinafter called "Sponsor") has expressed its desire to use Federal-aid funds for the eligible Project and to provide necessary matching cash share for such funds; and

WHEREAS, the [Insert Metropolitan Planning Organization] has awarded the Sponsor TAP funding for construction of the Project; and

WHEREAS, the Sponsor will transmit to the Arkansas Department of Transportation (hereinafter called the "Department") a signed and sealed Resolution from the City Council authorizing the Sponsor's CEO to execute agreements and contracts with the Department for the Project; and

WHEREAS, funding participation will be as follows, subject to the amount of Federal-aid approved for the Project:

	<u>Maximum</u> <u>Federal %</u>	<u>Minimum</u> <u>Sponsor %</u>
Project Design:	0	100
Right-of-Way/Utilities:	0	100
Construction:	80	20
Construction Inspection:	0	100
Department Administrative Cost (1% of Const. Amt.):	0	100

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

WHEREAS, it is understood that 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 areas of expertise.

WHEREAS, the parties agree, unless specifically stated otherwise, that the provisions of this agreement are not intended to create or confer a third party benefit or right in any person or entity, not a party to this agreement.

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. 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 (Attachment B). 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 C). Then, forward AHPP's approval to the Department.
3. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer must sign the plans and specifications for the Project.
4. Be responsible for any necessary coordination with effected railroads including preliminary and final plan review and for executing any formal railroad maintenance and construction agreements that may be necessary for the project. This includes ensuring that potential bidders are aware of railroad coordination required during construction including flagging services and insurance.
5. Complete the process for all permits that might be required for the project. This could include, but is not limited to, the US Army Corp of Engineers Section 404 permit; and the Arkansas Department of Environmental Quality's Section 401 Water Quality Certification, Short Term Activity Authorization, and National Pollutant Discharge Elimination System permit. The Section 404 permitting application(s) and/or determination information should be submitted with the plans to the Department in order to aid in the completion of the environmental documentation.
6. Provide any necessary higher levels of investigation for the required environmental document should the Project have uncertain or significant cultural, environmental or social impacts; have a likelihood of generating controversy; and/or possible economic impacts. For projects located on federal lands, the Sponsor must submit a completed environmental document for the Project, approved by the agency with authority over the federal lands.
7. Ensure 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).

8. Before acquiring property or relocating utilities, contact the Department's Right of Way Division to obtain the procedures for acquiring right-of-way and adjusting utilities in conformance with federal regulations. **NOTE: Failure to notify the Department prior to initiating these phases of work may result in all project expenditures being declared non-participating in federal funds.**
9. Acquire property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (commonly referred to as the "Uniform Act").
10. Provide a copy of the registered deed or other approved documentation and an appropriate certification stating the Sponsor's clear and unencumbered title to any right-of-way to be used for the Project and the land is accessible to the general public for recreational purposes (See Attachment E1). If property has been acquired for the Project, use Attachment E2 for certification of the right-of-way.
11. Submit a certification letter (Attachment F), including all items noted, to the Department when requesting authority to advertise the Project for construction bids.
12. Advertise for bids in accordance with federal procedures as shown in Attachment G. **NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.**
13. Forward a copy of all addenda to the Project during the advertisement to the Department.
14. After bids are opened and reviewed, submit a certification (Attachment H), including all items noted, to the Department and request concurrence in award of the contract.
15. 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.
16. Perform construction inspection in accordance with Attachment I.
17. 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 (CCRR) form (Attachment J).
18. Attach Report of Daily Work Performed (Attachment K) for all days that correspond with each CCRR submittal.
19. 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.
20. 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 L). This form must be signed by the engineer 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.

21. Maintain accounting records to adequately support reimbursement with Federal-aid funds and be responsible for the inspection, measurement and documentation of 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.
22. 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.
23. Agree that any and all claims for damages to property or injury to persons caused by any act or omission, negligence, or misconduct from the performance of work by the Sponsor's contractor on the Project shall be the sole responsibility of the Sponsor's contractor and in this regard the Sponsor shall require the contractor on the Project to procure and maintain a General Public Liability Insurance Policy during the duration of the Project which shall be endorsed to include broad form general liability and complete operations coverage on the Project. The contractor shall furnish the Sponsor with documentation of proof of liability insurance coverage with submission of the signed contract.
24. Agree that any claims, liability, costs, expenses, demands, settlements, or judgments arising from misconduct or the negligent acts or omissions of the Sponsor, its employees, agents or contractors in the performance of the Project and this Agreement must be presented to the Sponsor. Further, the Sponsor by acceptance of this grant, agrees that the Department and the Arkansas State Highway Commission, as the pass-through entity, have no duty or responsibility for the design, construction, maintenance or operation of the Project that is the subject of this grant, and, therefore shall have no liability related to the design, construction, maintenance or operation of the Project. The Sponsor also agrees to assume all risks associated with the work to be performed by its agents, employees, and contractors under this grant and Agreement and the Department and the Arkansas State Highway Commission, as the pass-through entity, shall not be responsible or liable for any damages whatsoever from the actions of the Sponsor, its employees, agents and contractors.
25. 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.
26. 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 M).
27. 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.

28. Be responsible for its portion of the total project cost and 1% of the contract amount for Department administration costs. The funds to be submitted for Department administrative costs shall have a maximum value equaling 1% of the TAP award plus the required non-federal match.
29. Be responsible for 100% of all project costs incurred should the Project not be completed as specified.
30. Be responsible for 100% of any and all expenditures for which federal funds do not participate or that are not approved for federal funds.
31. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Attachment N), which is necessary for Project participation.
32. 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.
33. Repay all federal funds if this is determined necessary for any reason.
34. 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 a project due to the Project's obsolescence.
35. 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.
36. 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.
37. Promptly notify the Department if the Project is rendered unfit for continued use by natural disaster or other cause.
38. Complete and transmit to the Department both pages of the Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements (Attachment O).

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. Notify the Sponsor when right-of-way and/or utility plans are approved and the Sponsor may proceed with right-of-way acquisition and/or utility adjustments.
4. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
5. Review 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 award of the construction contract for the Project.
9. Participate in the Sponsor's preconstruction and final acceptance meetings.
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. Reimburse the Sponsor 80% (Federal-aid share) for eligible costs up to the maximum Federal-aid amount as approved in the CCRR form (Attachment J). This reimbursement will be limited to the maximum Federal-aid amount and to the federal amount available at the time payment is requested. 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.
13. 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 L).

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 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 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 _____ day of _____, _____.

ARKANSAS DEPARTMENT OF
TRANSPORTATION

[INSERT SPONSOR NAME]

Scott E. Bennett, P.E.
Director

[CEO Name]
[CEO Title]

[Attorney Name]
City Attorney

**ARKANSAS DEPARTMENT OF TRANSPORTATION
NOTICE OF NONDISCRIMINATION**

The Arkansas Department of Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibit 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 (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the 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 Joanna P. McFadden 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: joanna.mcfadden@ardot.gov

Free language assistance for Limited English Proficient individuals is available upon request.

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