

**AGREEMENT OF UNDERSTANDING**

**BETWEEN**

**THE NORTHWEST ARKANSAS REGIONAL PLANNING COMMISSION**

**AND**

**THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**

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

RELATIVE TO

Implementation of the **Northwest Arkansas Razorback Regional Greenway Trail** (hereinafter called the "Project") as a Federal-aid project.

WHEREAS, the **Northwest Arkansas Regional Planning Commission** (hereinafter called the "Sponsor") has been selected by the U.S. Department of Transportation to receive Tiger II Discretionary Grant Program funding for the Project; and

WHEREAS, the Sponsor has expressed its desire to use Federal-aid funds for an eligible project and to provide necessary matching for such funds; and

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

	<u>Maximum Federal %</u>	<u>Minimum Sponsor %</u>	
Preliminary Engineering by Consultant	80	20	
Right-of-Way/Utilities	80	20	
Construction	80	20	
Construction Engineering by Consultant	80	20	
Department Administrative Costs	0	100	; and

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

WHEREAS, the Sponsor will be responsible for all Project phases in order to expedite Project implementation; and

WHEREAS, environmental documentation for the Project is being prepared by the Sponsor using 100% Sponsor 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 Board of Directors authorizing the Executive Director to execute agreements and contracts with the Department for the Project; 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 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.

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 and will accept the responsibilities and assigned duties as described hereinafter.

THE SPONSOR WILL:

1. Initially submit to the Department \$5,000 for Department administrative costs associated with state preliminary engineering, which includes but is not limited to, on site meetings, environmental review, and plan and specification review. The Sponsor's final share of cost for this phase will be determined by actual Department charges to preliminary engineering.
2. Be responsible for hiring a consultant engineering firm(s) in accordance with the Local Agency Consultant Selection Procedures (Attachment B) to provide engineering services which include preliminary engineering and construction engineering for the Project. **NOTE: FHWA authorization and Department approval must be given prior to issuing a work order to the consultant for federal funds to be allowed in this phase.**
3. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer must sign the plans and specifications for the Project. (See Attachment C for items to be included in the bid proposal.)
4. Understand that **expenditures for preliminary or construction engineering performed by the Sponsor's forces are not eligible for reimbursement with federal funds.**
5. Submit the necessary environmental documentation as required by FHWA and conduct any required public involvement meetings and public hearings.
6. 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.
7. Make periodic payments to the consultant for preliminary engineering for the Project and request reimbursement from the Department.
8. Submit a letter to the Right of Way Division of the Department that (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 any expenditures being declared non-participating in federal funds.**

9. Ensure the preparation of utility adjustment and right-of-way plans are in accordance with Arkansas State Highway Commission Policy.
10. 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 D).
11. Submit a certification letter (Attachment E), 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 F. **NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.**
13. Forward a copy of all addenda issued for the Project during the advertisement to the Department.
14. After bids are opened and reviewed, submit a Certification Letter Requesting Concurrence in Award (Attachment G), including all items noted, to the Department.
15. Prior to awarding the construction contract, submit a check for \$5,000 for Department administrative costs on the Project during construction. The Sponsor's final share of cost for this phase will be determined by actual Department charges to construction engineering.
16. Have a full-time employee of the Sponsor in responsible charge during construction of the Project.
17. Make periodic payments to the consultant for construction engineering for the Project and request reimbursement from the Department.
18. 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 (Attachment H).
19. Prior to executing the work, submit construction contract change orders to the Department's Resident Engineer in charge of reimbursements for review and approval.
20. 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.
21. Upon completion of the Project, submit the final Construction Certification and Reimbursement Request to certify that the Project was accomplished in accordance with the plans and specifications (Attachment H).
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. Be responsible for all costs not provided by the Federal Highway Administration.
24. Repay to the Department the federal share of the cost of the Project if for any reason the Federal Highway Administration removes federal participation.
25. Be responsible for 100% of any and all expenditures which may be declared non-participating in federal funds, including any such award by the State Claims Commission.
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 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Attachment I).
27. Grant the right of access to the Sponsor's records pertinent to the Project and the right to audit by the Department and Federal Highway Administration officials.
28. 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.
29. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Attachment J), which is necessary for Project participation.
30. Provide to the Department all information needed for compliance with the First Tier Subaward requirements for the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended (Attachment K).
31. Repay to the Department the federal share of the cost of any portion of the 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.
32. 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.
33. 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;
  - 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.

34. Promptly notify the Department if the Project is rendered unfit for continued use by natural disaster or other cause.
35. 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 11th Amendment of the United States Constitution. This obligation of indemnification shall survive the termination or expiration of this Agreement.
36. 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.

THE DEPARTMENT WILL:

1. Maintain an administrative file for the Project and be responsible for administering Federal-aid funds.
2. Upon receipt of the necessary documentation, reimburse the Sponsor 80% of the consultant costs.
3. Review environmental documentation prepared by the Sponsor.
4. Obtain authorization for the consultant contract for preliminary and construction engineering from the Federal Highway Administration prior to authorizing the use of federal funds.
5. Review plans and specifications submitted by the Sponsor.
6. When requested, provide the necessary services relative to right-of-way acquisition, appraisal, relocation and utility adjustments in accordance with the Uniform Act.
7. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
8. 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.
9. Advise the Sponsor when to proceed with advertisement of the Project for construction bids.
10. Review and concur in award of the construction contract for the Project.
11. Review and approve any necessary change orders for project/program eligibility.

12. Reimburse the Sponsor 80% (Federal-aid share) for eligible construction costs approved in the Construction Certification and Reimbursement Request form (Attachment H). 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 amount due upon completion of the Project and submittal of the final Construction Certification and Reimbursement Request form (Attachment H).
14. Be reimbursed for costs involved in performing all the services listed above.

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 highway funds.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement this 4<sup>th</sup> day of May, 2011.

ARKANSAS STATE HIGHWAY  
AND TRANSPORTATION DEPARTMENT

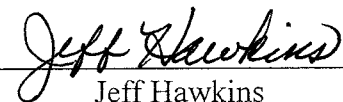
NORTHWEST ARKANSAS REGIONAL  
PLANNING COMMISSION

  
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Dan Flowers

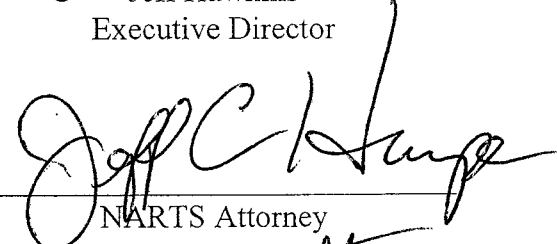
Director of Highways and Transportation

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Jeff Hawkins

Executive Director

  
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NARTS Attorney  
City Attorney  
Springdale, Ark.

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

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