

**AGREEMENT OF UNDERSTANDING**

**BETWEEN**

**SPONSOR**

**AND**

**MPO NAME**

**AND**

**THE ARKANSAS DEPARTMENT OF TRANSPORTATION**

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

RELATIVE TO

Implementation of **Job XXXX, Job Name XXXX** (hereinafter called the “Project”) as a Federal-aid **Transportation Alternatives Program – Attributable (TAP-A)** project.

**WHEREAS**, funding in the Infrastructure Investment and Jobs Act (IIJA) includes the following Federal-aid funds for certain local projects:

	<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	80	20

**WHEREAS**, the **Sponsor** (hereinafter called the “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 Sponsor has transmitted to the Arkansas Department of Transportation (hereinafter called the “Department”) Resolution No. **XXXX** from the Sponsor’s governing body authorizing the Sponsor’s Chief Executive Officer (CEO) to execute agreements and contracts with the Department for the Project; and

**WHEREAS**, the **MPO Name** (hereinafter called the “**Commission**”) awarded the Sponsor Federal-aid **CRP>200K** funds; and

**WHEREAS**, funding participation will be subject to a limit of **\$XXX** maximum Federal-aid **CRP>200K** funds for the **XXXX** phase of the Project and obligation limitation approved; and

**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) (Form LPA-001) 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; and

**WHEREAS**, the Department has published the Arkansas Local Public Agency Project Manual (available at [www.ardot.gov/LPA](http://www.ardot.gov/LPA)) which outlines procedures and requirements which must be followed during development and construction of the Project; and

**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, Commission, 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. 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 (Form LPA-005). If the designated full-time employee changes, the Sponsor must notify the Department by resubmitting Form LPA-005. 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;
  - Maintain familiarity of day to day project operations, including project safety issues;
  - Make or participate in decisions about changed conditions or scope changes that require change orders and/or supplemental agreements;
  - During construction, visit and review the project on a daily basis;
  - Review financial processes, transactions, and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
  - Direct project staff, Sponsor or consultant, to carry out project administration and contract oversight, including proper documentation; and
  - Be aware of the qualifications, assignments and on-the-job performance of the Sponsor and consultant staff at all stages of the project.
2. Initially submit to the Department \$1,000 (20%) to be matched by \$4,000 (80%) Federal-aid funds for Department administrative costs associated with state preliminary engineering, which include but are not limited to, on site meetings, environmental review, and plan and specification review. The Sponsor's final cost for this phase will be determined by actual Department charges to preliminary engineering.
3. Be responsible for hiring a consultant engineering firm(s) in accordance with the Local Agency Consultant Selection Procedures (Form LPA-002) to provide engineering services which include environmental documentation, 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.**
  - Make periodic payments to the consultant for preconstruction phases of the Project and request reimbursement from the Department.
  - Request reimbursement from the Department for eligible expenditures related to preconstruction phases of the Project. Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.

4. If desired, request that the Department contract with one of its on-call consultants on behalf of the Sponsor (Form LPA-031).
  - Execute a task order with the Department and the selected on-call consultant for implementation of selected phases of the Project.
  - Make periodic payments to the on-call consultant for work accomplished in accordance with the task order.
  - Request reimbursement from the Department for eligible on-call consultant related costs incurred for the project. Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
5. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer must sign the plans and specifications for the Project. (See Form LPA-003 for items to be included in the bid proposal.)
6. Make periodic payments to the consultant for preliminary engineering for the Project and request reimbursement from the Department. Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
7. Understand that **expenditures for preliminary or construction engineering performed by the Sponsor's forces are not eligible for reimbursement with federal funds.**
8. Prepare the necessary environmental documentation as required by FHWA and conduct any required public involvement meetings and public hearings.
9. Ensure that the plans and specifications are developed using the Department's standard drawings and Standard Specifications for Highway Construction (latest edition).
10. 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.
11. 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 compliance 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.**
12. 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").
13. Ensure the preparation of utility adjustment and right of way plans are in accordance with Arkansas State Highway Commission Policy.
14. Be responsible for all non-reimbursable costs associated with the Sponsor owned utilities as defined in the Department's Utility Accommodation Policy.
15. Be responsible for the matching share for all reimbursable costs associated with the Sponsor owned utilities as defined in the Department's Utility Accommodation Policy.

16. 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 (Form LPA-007). If property has been acquired for the Project, use Form LPA-006 for certification of the right of way. **NOTE: Any property that is to become Department right of way must be acquired in the Department's name.**
17. Submit plans at 30%, 60%, and 90% completion stages for Department review.
18. Submit a certification letter (Form LPA-008), including all items noted, to the Department when requesting authority to advertise the Project for construction bids.
19. Advertise for bids in accordance with federal procedures as shown in Form LPA-010. **NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.**
20. Forward a copy of all addenda issued for the Project during the advertisement to the Department.
21. After bids are opened and reviewed, submit a Certification Letter Requesting Concurrence in Award (Form LPA-013), including all items noted, to the Department.
22. Prior to awarding the construction contract, submit a check for \$1,000 (20%) to be matched by \$4,000 (80%) Federal-aid funds 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.
23. Prior to issuing the notice to proceed to the Contractor, the Sponsor must hold a pre-construction meeting with the Contractor and **must invite the Department's Resident Engineer assigned to the Project.**
24. Ensure that all work, material testing and acceptance, and inspection is conducted in accordance with the Department's Standard Specifications for Highway Construction (latest edition), Manual of Field Sampling and Testing Procedures, and Resident Engineer's Manual and with the plans, specifications, and all other applicable FHWA and Department procedures for the Project.
25. Make periodic payments to the consultant for construction engineering for the Project and request reimbursement from the Department. Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
26. 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 (Form LPA-014). Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
27. Attach LPA Report of Daily Work Performed (Form LPA-015) for all days that correspond with each CCRR submittal.

28. Prior to executing the work, submit change orders (Form LPA-022) to the contract to the Department's Resident Engineer assigned to the Project for review and approval for program eligibility.
29. 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 (Form LPA-016). 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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 Part 21),

Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, (Form LPA-029).

35. 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 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Form LPA-017).
36. Grant the right of access to the Sponsor's records pertinent to the Project and the right to audit by the Department and FHWA officials.
37. Be responsible for 100% of all project costs incurred:
  - should the Project not be completed as specified;
  - should the Project be declared non-participating in federal funds, including any such award by the State Claims Commission; or
  - not provided by the FHWA.
38. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Form LPA-018), which is necessary for Project participation.
39. 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.
40. Retain total, direct control over the Project throughout the life of all project improvements outside of the Department's right of way 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.
41. 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.
42. 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 \$750,000 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 \$750,000 threshold is subject to change after OMB periodic reviews.
43. Promptly notify the Department if the Project improvements outside of the Department's right of way are rendered unfit for continued use by natural disaster or other cause.

44. Complete and transmit to the Department both pages of the Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements (Form LPA-019).
45. After each quarter of the calendar year, complete and transmit to the Department the LPA Project Quarterly Report Form (Form LPA-020) until the Project is complete.

**THE COMMISSION WILL:**

1. Provide up to \$XXX in Federal-aid CRP>200K funds for the XXXX phase of the Project as funds become available.

**THE DEPARTMENT WILL:**

1. Maintain an administrative file for the Project and be responsible for administering Federal-aid funds.
2. Review plans and specifications submitted by the Sponsor.
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. 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.
6. Advise the Sponsor when to proceed with advertisement of the Project for construction bids.
7. Review bid tabulations and concur in award of the construction contract for the Project.
8. Ensure that the Sponsor and the Sponsor's consultant provide adequate supervision and inspection of the Project by performing periodic inspections with the Sponsor's representatives and their consultant to verify that the work being performed by the Sponsor's contractor, and documented and certified by the Sponsor, meets the requirements of the Project plans, specifications, and all applicable FHWA and Department procedures. The Department intends to perform these inspections, at a minimum, when the construction work is approximately 10% and 50% completed. The Department will also participate in the final inspection of the Project.
9. Review and approve any necessary change orders for project/program eligibility.
10. Reimburse the Sponsor 80% (Federal-aid share) for eligible construction costs approved in the CCRR form (Form LPA-014). 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.
11. 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 (Form LPA-016).
12. Provide all form updates via email to the contact as shown on Form LPA-005.

13. Be reimbursed for costs involved in performing all the services listed above.

**IT IS FURTHER AGREED** that the Department reserves the right to cancel the Project without liability against the Department for any reason including, but not limited to, unreasonable delay or lack of progress, the Sponsor is unable to provide an audit-worthy reason for the substantial delay in the project development or completion process, or the Sponsor is unresponsive to the Department's requests.

**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.

**IT IS FURTHER AGREED** that should the Sponsor fail to pay to the Department any required funds due for project implementation or fail to complete the Project as specified in this Agreement, or fail to adequately maintain or operate the Project, the Department may cause such 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 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Agreement of Understanding between:

The **Sponsor, MPO Name,** and the Arkansas Department of Transportation relative to:

Implementation of **Job XXXX, Job Name XXXX.**

Signatories

**SPONSOR**

\_\_\_\_\_  
**CEO's Name**  
**CEO's Title**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**XXX**  
Attorney

\_\_\_\_\_  
Date

SAMPLE

Agreement of Understanding between:

The **Sponsor, MPO Name,** and the Arkansas Department of Transportation relative to:

Implementation of **Job XXXX, Job Name XXXX.**

Signatory

**MPO NAME**

\_\_\_\_\_  
CEO's Name  
CEO's Title

\_\_\_\_\_  
Date

SAMPLE

Agreement of Understanding between:

The **Sponsor, MPO Name,** and the Arkansas Department of Transportation relative to:

Implementation of **Job XXXX, Job Name XXXX.**

Signatory

**ARKANSAS DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Jared D. Wiley, P.E.  
Director

\_\_\_\_\_  
Date

**All Forms referenced in this Agreement are available in digital format on the Department's webpage [www.ardot.gov/LPA](http://www.ardot.gov/LPA).**

**ARKANSAS DEPARTMENT OF TRANSPORTATION**

**NOTICE OF NONDISCRIMINATION**

The Arkansas Department of Transportation (ARDOT) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, ARDOT does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the FMCSA Title VI Program), or disability in the admission, access to and treatment in ARDOT's programs and activities, as well as ARDOT's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding ARDOT's nondiscrimination policies may be directed to the Civil Rights Division (P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711)), or the following email address: [Civil.Rights@ardot.gov](mailto:Civil.Rights@ardot.gov).

Free language assistance may be available upon request.

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