R-16-88

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING ACCEPTANCE OF A GRANT AWARDED TO THE CITY OF NORTH LITTLE ROCK THROUGH THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT'S "SAFE ROUTES TO SCHOOL PROGRAM"; APPROPRIATING $37,627.00 IN MATCHING FUNDS; AND FOR OTHER PURPOSES.

WHEREAS, Resolution No. 8773, adopted March 23, 2015, authorized application on behalf of the City of North Little Rock, Arkansas ("the City") for grant funds from the Arkansas Highway and Transportation Department's "Safe Routes to School Program" for construction of sidewalks at Amboy Elementary and Boone Park Elementary Schools; and

WHEREAS, the Arkansas Highway and Transportation Department ("AHTD") has approved an 80-20% matching Federal grant funding for Job 061492, Amboy/Boone School Sidewalks (NLR) (TAP-15); and

WHEREAS, total cost for the project is $188,135.00, which will be paid as follows: Federal grant proceeds in the amount of $150,508.00 (80% of the project cost), and the 20% local matching share in the amount of $37,627.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the City Council approves acceptance of the Amboy/Boone School Sidewalks (NLR) (TAP-15) grant as an Arkansas Transportation Alternatives Program project from the Arkansas Highway and Transportation Department ("AHTD") in the amount of $150,508.00, representing 80% of the project cost.

SECTION 2: That the Mayor and City Attorney are hereby authorized to execute an Agreement of Understanding (substantially similar to Exhibit "A" attached hereto) between the City and AHTD for implementation of AHTD Job 061492 for construction of the sidewalks for Amboy and Boone Park Elementary Schools.

SECTION 3: That the amount of $37,627.00, representing 20% of the total project cost, is hereby appropriated from the Sales Tax Capital Improvement Fund as matching funds.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED: APPROVED:

_____ _____

Mayor Joe A. Smith

SPONSOR:

Mayor Joe A. Smith

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED 11:22 A.M. _____ P.M.

By City Atty Carter

DATE 5-17-16

Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas

RECEIVED BY

EXHIBIT "A"

AGREEMENT OF UNDERSTANDING
BETWEEN
THE CITY OF NORTH LITTLE ROCK
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 061492, Amboy/Boone School Sidewalks (NLR) (TAP-15) (S)** (hereinafter called the "Project") as an Arkansas Transportation Alternatives Program project.

WHEREAS, funding in the Moving Ahead for Progress in the 21st Century Act (MAP-21) includes 80% Federal-aid funds to be matched with 20% non-federal funds for approved Transportation Alternatives Program projects; and

WHEREAS, the **City of North Little Rock** (hereinafter called "Sponsor") has expressed its desire to use Federal-aid funds for the eligible Project and to provide necessary matching 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 Sponsor's governing body authorizing the Sponsor's CEO or their designated representative to execute agreements and contracts with the Department for the Project; and

WHEREAS, funding participation will be as follows, subject to a limit of **$150,508** maximum Federal-aid approved for the Project:

	Maximum Federal %	Minimum Sponsor %
Project Design:	0	100
Right-of-Way/Utilities:	0	100
Project Construction:	80	20
Project Construction Inspection:	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; 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, 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. Sponsors that require a reduction in the scope of their project will submit the Revision of Project Scope and Budget (Attachment C) with the signed Agreement of Understanding.

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 if the project includes design of structural components. Plans which include the design of only non-infrastructure components will not require a registered stamp.

4. Comply with provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, FHWA Recreational Trails Program Guidance, and any other Federal, State, and/or local laws, rules and/or regulations. (See Attachment D for items to be included in the bid proposal).

5. 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 <u>all</u> project expenditures being declared non-participating in federal funds.**

6. 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").

7. 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 public recreational purposes (See Attachment E).

8. Ensure the preparation of utility adjustment and right-of-way plans are in accordance with Arkansas State Highway Commission Policy.

9. Submit a certification letter (Attachment F), including all items noted, to the Department when requesting authority to advertise the Project for construction bids.

10. 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.**

11. Forward a copy of all addenda to the Project during the advertisement to the Department.

12. 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.

13. 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**.

14. 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.

15. Construct the Project in accordance to plans and specifications that were developed by the Sponsor, or the Sponsor's representative, and were reviewed and approved by the Department prior to the issuance of the Notice to Proceed.

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). Requests for reimbursement must be made at least once every six months that construction projects are active in order to avoid being put on the FHWA inactive project list.

18. Attach Report of Daily Work Performed (Attachment K) for all days that correspond with each CCRR submittal.

19. Upon project completion hold a final acceptance meeting for the Project and submit the 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/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.

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. 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.

22. To the extent permitted by law, 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. It is acknowledged that the Sponsor is entitled to certain immunities provided by A.C.A. §21-9-301 and that nothing contained herein shall be construed as a waiver of any such statutory immunities.

23. 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.

24. 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).

25. 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.

26. Be responsible for its portion of the total project cost and 1% of the contract amount for Department administration.

27. Be responsible for 100% of all project costs incurred should the Project not be completed as specified.

28. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.

29. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Attachment N), which is necessary for Project participation.

30. 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.

31. Repay all federal funds if this is determined necessary for any reason.

32. 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.

33. 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 the withholding of all future Federal-aid funds.

34. 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.

35. Promptly notify the Department if the Project is rendered unfit for continued use by natural disaster or other cause.

36. 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. Request review from the Arkansas Historic Preservation Program (AHPP).

3. Provide routine environmental documentation for the Project.

4. 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.

5. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.

6. Review plans and specifications for project/program eligibility.

7. 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.

8. Advise the Sponsor when to proceed with advertisement of the Project for construction bids.

9. Review bid tabulations and concur in award of the construction contract for the Project.

10. Participate in the Sponsor's preconstruction and final acceptance meetings.

11. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.

12. Review and approve any necessary change orders for project/program eligibility.

13. 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.

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 Final Acceptance Report form (Attachment L).

15. Reserve the right to cancel the Project if there is an unreasonable delay in project development or completion of the project, there is a lack of progression toward project development or completion of the project, 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 Department 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 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 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 on this _____

day of _____, 2016.

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT	CITY OF NORTH LITTLE ROCK
_____ Signature	_____ Signature
Scott E. Bennett, P.E.	_____ Name (please print)
Director of Highways and Transportation	Mayor
	_____ Signature
	_____ Name (please print)
	City Attorney

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation Department (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 or disability, 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@ahtd.ar.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.

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".)