

City Council Agenda Items
and
Contracts, Leases or Agreements

~~7/16/2013~~

8/6/13

City Council Meeting Date
Agenda Items Only

Matt Mihalevich ^{MM}

Submitted By

Engineering

Division

Development Services

Department

Action Required:

A resolution approving an Agreement of Understanding and authorizing the Mayor to sign additional contracts with the Arkansas Highway and Transportation Department as necessary to utilize \$75,000.00 in federal-aid funds through the Arkansas Recreational Trails Program for the construction of the Lake Fayetteville Trail Connector; and approving a budget adjustment to recognize the revenue.

\$ 75,000.00

Cost of this request

\$0.00

Category / Project Budget

Trail Development

Program Category / Project Name

4470.9470.5814.05

Account Number

\$0.00

Funds Used to Date

Trail Improvements

Program / Project Category Name

02016.1303

Project Number

\$0.00

Remaining Balance

Sales Tax Cap Imp

Fund Name

Budgeted Item

Budget Adjustment Attached

Terry D. Gully
Department Director

6-27-13

Date

Previous Ordinance or Resolution #

158-12

Department Director

06-27-2013

Original Contract Date:

8/7/2012

Kerry
City Attorney

7-23-13

Date

Original Contract Number:

City Attorney

Maria Hertwech
Finance and Internal Services Director

6/28/13

Date

Received in City Clerk's Office 6-27-13 11:02 RCVD

Finance and Internal Services Director

Ann Mar
Chief of Staff

6/30/13

Date

Received in Mayor's Office

Chief of Staff

David Jordan
Mayor

7/1/13

Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director *JP*
Chris Brown, City Engineer *CB*

From: Matt Mihalevich, Trails Coordinator *MM*

Date: June 18th, 2013

Subject: Agreement of Understanding - Recreational Trails Program Grant

RECOMMENDATION:

Approval of an Agreement of Understanding and authorizing the Mayor to sign additional contracts with the Arkansas Highway and Transportation Department as necessary to utilize \$75,000.00 in federal-aid funds through the Arkansas Recreational Trails Program for the construction of the Lake Fayetteville Trail Connector along the north side of the Marina to the North Shore Disc Golf Area; and approving a budget adjustment to recognize the revenue. A willingness to apply for this grant was approved on August 7th of 2012 by resolution 158-12.

PROPOSAL:

The proposed ½ mile section of paved trail is planned along the south side of the existing park road along the north side of the Marina connecting to the North Shore Disc Golf Area. Currently this section of road is shared between trail users and vehicles presenting safety concerns especially as the use of the Lake Fayetteville continues to increase. The northern portion of Lake Fayetteville Trail including this section of trail will be part of the 36-mile Razorback Regional Greenway and this project would bring this section of trail up to the quality standards of the rest of the Greenway. Since this section of trail is part of the Razorback Regional Greenway, the project may also be eligible for additional private funding.

BUDGET IMPACT:

The terms of this grant require a 20% match of the total project cost, or \$15,000.00. The Agreement of Understanding obligates the City to pay \$15,000 toward the trail project. Upon receipt of an official Notice to Proceed from the Arkansas Highway and Transportation Department, the project will be reimbursable at a rate of 80% up to the total grant amount of \$75,000. The total project cost is estimated at \$200,000 so the City's total cost for the project is estimated to be \$125,000 to be funded through the Trail Development Capital Improvement Program.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AN AGREEMENT OF UNDERSTANDING BETWEEN THE CITY OF FAYETTEVILLE AND THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT AND TO APPROVE THE ATTACHED BUDGET ADJUSTMENT OF \$75,000.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Agreement of Understanding between the City of Fayetteville and The Arkansas State Highway and Transportation Department and approves the attached budget adjustment of \$75,000.00.

PASSED and APPROVED this 6th day of August 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

RESOLUTION NO. 158-12

A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF FAYETTEVILLE TO UTILIZE FEDERAL-AID RECREATIONAL TRAILS FUNDS AND AUTHORIZING APPLICATION FOR A 20% LOCAL MATCH GRANT THROUGH THE ARKANSAS RECREATIONAL TRAILS PROGRAM IN AN AMOUNT UP TO \$100,000.00 FOR CONSTRUCTION OF A SECTION OF LAKE FAYETTEVILLE TRAIL

WHEREAS, the City of Fayetteville understands Federal-Aid Recreational Trails funds are available in an amount up to \$100,000.00 at 80% federal participation and 20% local match to develop or improve Lake Fayetteville Trail; and

WHEREAS, the City of Fayetteville understands that Federal-Aid funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and

WHEREAS, the City of Fayetteville understands that there will be no reimbursement for any work accomplished prior to the issuance by the Arkansas State Highway and Transportation Department of an official Notice to Proceed; and

WHEREAS, this project, using federal funding, will be open and available for use by the general public and maintained by the City of Fayetteville.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that the City of Fayetteville will participate in accordance with its designated responsibility, including maintenance of this project.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute all appropriate agreements and contracts necessary to expedite the construction of the Lake Fayetteville Trail project.

Section 3: That the City Council of the City of Fayetteville, Arkansas pledges its full support and hereby authorizes the City of Fayetteville to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

PASSED and APPROVED this 7th day of August, 2012.

APPROVED:

By: 
LIONELD JORDAN, Mayor

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer





ARKANSAS STATE HIGHWAY COMMISSION

P.O. Box 2261 • LITTLE ROCK, ARKANSAS 72203-2261
PHONE: (501) 569-2000 • VOICE/TTY 711 • FAX: (501) 569-2400
WWW.ARKANSASHIGHWAYS.COM

May 2, 2013

JOHN ED REGENOLD
CHAIRMAN
Armored

JOHN BURKHALTER, P.E.
VICE CHAIRMAN
Little Rock

DICK TRAMMEL
Rogers

THOMAS B. SCHUECK
Little Rock

ROBERT S. MOORE, JR.
Arkansas City

SCOTT E. BENNETT, P.E.
DIRECTOR OF
HIGHWAYS AND TRANSPORTATION

Mr. Matt Mihalevich
Trails Coordinator
City of Fayetteville
113 W Mountain Street
Fayetteville, AR 72701

Dear Mr. Mihalevich:

Reference is made to your application for trail development funding through the Arkansas Recreational Trails Program. Your project, Lake Fayetteville Trail Connector, has been approved to receive up to \$75,000 in Federal funding.

The Arkansas State Highway and Transportation Department (AHTD) will host a project administration workshop on Thursday, May 23, 2013, starting at 1:00 p.m. The steps necessary to develop and implement your project will be outlined in detail during the workshop. It is extremely important that someone familiar with your project attend this session. The workshop will be held in the auditorium of the AHTD headquarters building. We are located in southwest Little Rock at Exit 130 along Interstate 30.

We look forward to working with you to develop this project. If you have any questions regarding the Arkansas Recreational Trails Program or the workshop, please call Bill Bastress at (501) 569-2209.

Sincerely,

Scott E. Bennett
Director of Highways
and Transportation

c: Highway Commission
Deputy Director and Chief Engineer
Assistant Chief Engineer – Planning
Planning and Research
District 4



Recreational Trails Program Preliminary Site Plan Proposed Lake Fayetteville Trail Connection 2,154 Linear Feet



Legend

	Proposed Lake Fayetteville Trail
	Existing Multi-Use Trail
	Fayetteville City Limits



AGREEMENT OF UNDERSTANDING

BETWEEN

CITY OF FAYETTEVILLE

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 040656, Lake Fayetteville Trail Connector (hereinafter called "Project"), as a recreational trail development or improvement project.

WHEREAS, the Arkansas State Highway Commission has made available 80% Federal-aid funds for certain recreational trail projects; and

WHEREAS, the City of Fayetteville (hereinafter called "Sponsor") has expressed its desire to use Federal-aid funds for an eligible project; and

WHEREAS, funding participation for each phase of the project will be as follows subject to a limit of \$75,000 maximum Federal-aid approved for the project:

	<u>Federal %</u>	<u>Sponsor %</u>	
Project Design:	-0-	100%	
Utilities/Right of Way:	-0-	100%	
Project Inspection:	-0-	100%	
Project Construction:	80%	20%	;and

WHEREAS, the Sponsor knows of no legal impediments to the completion of the project; 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 create 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 understands that the Arkansas State Highway and Transportation Department (hereinafter called "Department") will require the Sponsor to adhere to the General Requirements for Recipients and Sub-recipients Concerning Disadvantaged Business Enterprises as stated on Attachment A; and

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. The City of Fayetteville does not waive its sovereign statutory immunity, but acknowledges that the City has full legal responsibility for the proper design, construction, maintenance and operation of the Lake Fayetteville Trail Connector as described as AHTD job number 040656. The City acknowledges that the Highway Department and Highway Commission have no duty or responsibility to users of this City trail, and therefore can have no liability related to the design, construction, maintenance or operation of this City trail. If the Arkansas Claims Commission ever grants a claim against the Highway Department or Highway Commission for any injury or damage to a person using the Lake Fayetteville Trail Connector during the duration of the Recreational Trails Program job number 040656, the City of Fayetteville agrees to pay this claim for the Highway Department or Highway Commission.
2. All Sponsors must review their application to ensure that the Scope of the project is accurate and the proposed budget is accurate. See Attachment B which must be completed and sent to the Department to ensure current scope and budget is accurate.
3. 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. Be responsible for the inspection and certification of all work in accordance with the plans and specifications for the Project and to retain all records relating to such inspections, certifications, any billing statements, and any other files necessary to document the performance and completion of the work. A statement in writing must be submitted to the Department when the Project is completed. The Sponsor shall retain **all records for three years** upon completion of the project in accordance with the requirements of 49 CFR; Subtitle A, Part 18, Subpart C, Section 18.42 – (See Attachment C for retention and access requirements for records). The date of completion of the project will be construed as the check date of the final payment submitted to the Sponsor by the Department.
4. If the project awarded is in excess of \$25,000 Attachment D needs to be completed and returned to the Department. Attachment D pertains to the Federal Funding Accountability and Transparency Act (FFATA).
5. Comply with provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, 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.

The Arkansas State Highway and Transportation (Department) complies with the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and other federal equal opportunity laws and therefore does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in Department 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 Nelson, Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2235, (Voice/TTY 711), or the following email address: EEO/DBE_Section_Head@ahtd.ar.gov.

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

6. Be responsible for its portion of the total project cost, which will include project design, construction inspection services, appraisal and acquisition of right-of-way, relocation services (when required), and adjustment of all man-made improvements, including utilities.
7. Provide a copy of the registered deed or an appropriate certification stating the Sponsor has a 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. Private or Non – Profit Organizations must review and submit Attachment F with all documents requested to the Department. No order to proceed will be granted to these organizations without the documents being submitted in full.
9. Request review from the Arkansas Historic Preservation Program (AHPP) (See Attachment G). Then, forward AHPP's approval to the Department.
10. **Refrain from any Project construction** for which the Sponsor expects monetary reimbursement **until a Notice to Proceed is received from the Department.**
11. If the project is to be advertised, for bids, it must be done in accordance with State and Federal procedures as shown in Attachment H. Bids are necessary for any goods, materials, or labor totaling \$25,000 or more.
12. Prepare plans, specifications, and a cost estimate for construction bid process. These plans will be reviewed by the Department at the Pre-Construction Conference and these records need to be maintained by the Sponsor for three years after the completion date of the project. A registered licensed professional engineer, architect, or landscape architect must sign the plans and specifications for the project for any project over \$25,000. For any project under \$25,000, the Sponsor's legal representative must countersign the plans. (See Attachment I for certification letter requesting concurrence in award of the contract to be sent to the Department).
13. Be responsible for 100% of any and all expenditures which are declared non-participating in Federal funds, including awards by the State Claims Commission.
14. Be responsible for 100% of all project costs incurred should the project not be completed as specified. Repay to the Department the Federal share of the cost of any portion of this Project if the Federal Highway Administration removes Federal participation due to actions of the Sponsor, its agents, its employees, or its assigns, or the Sponsor's consultants or their agents. Such actions shall include, but are not limited to, Federal non-participation arising from problems with design plans, construction, change orders, construction inspection, or contractor payment procedures.
15. Retain total, direct control over the Project throughout the life of the improvements and **not, without prior written approval from the Department:**
 - sell, transfer, or otherwise abandon any portion of the Project;
 - change the intended use of the project as stated in the approved Project application;
 - make significant alterations to any improvements constructed with Federal-aid funds; or
 - cease maintenance or operation of the project due to the Project's obsolescence.

16. 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 future Federal-aid funds. The Sponsor understands and agrees that the Department may cause necessary funds to be withheld from the Sponsor's gasoline 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.
17. Promptly notify the Department if the project is rendered unfit for continued use by natural disaster or other cause.
18. Repay all Federal funds if this is determined necessary for any reason.
19. 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.
20. Notify the Department upon completion of various phases of the work in order that a Department representative may review the project before any payments for such work are made to the Contractor. Once the Sponsor makes payments to suppliers and visible progress has been made toward the completion of the Project an on-site inspection of the Project may be requested by the Sponsor. No reimbursement will be made by the Department without an on-site inspection of the Project.
21. **Provide the Department with all necessary documentation** including a resolution of support from the Sponsor's governing body, approval from the State Historic Preservation Officer, proof of ownership, revised budgets and changes of the scope of the job, plans and specifications, and permits or rulings from the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Environmental Protection Agency, or other applicable agencies **within one calendar year of the date this Agreement of Understanding is signed by the Director of the Arkansas State Highway and Transportation Department. Extensions will not be granted. Funding for a project failing to provide this documentation will be withdrawn and will be allocated to other eligible recreational trail projects.**

THE DEPARTMENT WILL:

1. Be responsible for administering Federal-aid funds and for project approval and acceptance.
2. Review and approve environmental, archeological, wetland, or other necessary clearances and if proper documentation is provided and review of the land warrants than environmental clearance will be provided.
3. Review plans and specifications for the Project.
4. Advise the Sponsor when to proceed with construction of the Project.
5. Review and approve any necessary change orders for Project eligibility, regardless of funding source.

6. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
7. Reimburse the Sponsor for all legitimate, documented costs in accordance with the final executed contract.

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 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 Sponsor hereby authorizes the Director of the Department of Finance and Administration to transfer from any of the Sponsor's State funds to the Department's RRA account such sums as the Director of Highways and Transportation shall certify as due the Department under terms of this Agreement.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement on this _____
day of _____, 20__.

ARKANSAS STATE HIGHWAY
AND TRANSPORTATION DEPARTMENT

CITY OF FAYETTEVILLE

Scott E. Bennett
Director of Highways and Transportation

Lioneld Jordan
Mayor of Fayetteville

Arkansas State Highway and Transportation Department
Notice of Nondiscrimination

The Arkansas State Highway and Transportation (Department) complies with the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and other federal equal opportunity laws and therefore does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in Department 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 Nelson, 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: EEO/DBE_Section_Head@ahtd.ar.gov.

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