

City of Fayetteville Staff Review Form

City Council Agenda Items  
and  
Contracts, Leases or Agreements

September 3, 2013

City Council Meeting Date  
Agenda Items Only

Terry Gulley  
Submitted By

Transportation  
Division

Transportation Services  
Department

Action Required:

Transportation Division staff recommend approval of a memorandum of understanding with Ozark Regional Transit (ORT) to serve as a sub-grantee for a Federal Transit Administration grant in the amount of \$154,315.08 to provide funds for bench and transit shelter pads and sidewalk construction.

\$ 185,178.10  
Cost of this request

4470.9470.5814.00  
Account Number

02053 / 1301  
Project Number

\$ 1,103,643.00  
Category / Project Budget

\$ 408,515.04  
Funds Used to Date

\$ 695,127.96  
Remaining Balance

Sidewalk Improvements  
Program Category / Project Name

Transportation Improvements  
Program / Project Category Name

Sales Tax Capital Improvements  
Fund Name

Budgeted Item

Budget Adjustment Attached

Terry J. Gulley  
Department Director

8-16-13  
Date

Previous Ordinance or Resolution # \_\_\_\_\_

[Signature]  
City Attorney

8-19-13  
Date

Original Contract Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Paul A. Becher  
Finance and Internal Services Director

8-20-2013  
Date

Received in City  
Clerk's Office

ENTERED  
8/14/13  
1:57 pm

[Signature]  
Chief of Staff

8-21-13  
Date

Received in  
Mayor's Office

ENTERED  
8/20/13 BRP

[Signature]  
Mayor

8/21/13  
Date

Comments:

## CITY COUNCIL AGENDA MEMO

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**To:** Mayor and City Council

**Thru:** Don Marr, Chief of Staff

**From:** Terry Gulley, Transportation Services Director *TG*

**Date:** September 3, 2013

**Subject:** Ozark Regional Transit Memorandum of Understanding and Budget Adjustment

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### PROPOSAL:

Ozark Regional Transit (ORT) received Federal Transit Funds from the Arkansas Highway and Transportation Department to implement New Freedom projects, which benefit individuals with disabilities. New Freedom funds are not part of the Federal stimulus program. Ozark Regional Transit is encouraging Northwest Arkansas cities to leverage planned transit shelter and bus bench installations by using the New Freedom funds to pay for the labor and materials used to install the shelter and bus bench pads as well as associated sidewalk construction.

ORT was awarded shelters and benches through an American Recovery and Reinvestment Act program. New Freedom funds will enable the City to install the necessary concrete pads and construct sidewalks. The ORT projects help build public transit infrastructure that contribute to a livable transportation system.

### RECOMMENDATION:

Transportation Division staff recommends approval of a budget adjustment and memorandum of understanding with Ozark Regional Transit (ORT) to serve as a sub-grantee for a Federal Transit Administration grant in the amount of \$154,315.08 to provide funds for sidewalk construction and transit shelter bench pads. The selected project locations are on Front Street and Huntsville Road.

### BUDGET IMPACT:

The grant requires a 20% match or \$30,863.02 worth of labor, engineering, administrative services, or construction materials. Funds to cover these items have been budgeted in the Sidewalk Improvements capital project.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH OZARK REGIONAL TRANSIT AS A SUB-GRANTEE FOR A FEDERAL TRANSIT ADMINISTRATION GRANT IN THE AMOUNT OF \$154,315.08 TO FUND BENCH AND TRANSIT SHELTER PADS AND SIDEWALKS, AND APPROVING A BUDGET ADJUSTMENT

**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 a Memorandum of Understanding with Ozark Regional Transit as a sub-grantee for a Federal Transit Administration grant in the amount of \$154,315.08 to fund bench and transit shelter pads and sidewalks.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution as Exhibit "A".

**PASSED and APPROVED** this 3<sup>rd</sup> day of September, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

**City of Fayetteville, Arkansas  
Budget Adjustment Form**

<b>Budget Year</b> 2013	Division: Transportation Services Department: Transportation Services	<b>Request Date</b> 9/3/2013	<b>Adjustment Number</b>
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**BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION**

The City of Fayetteville will be a sub-recipient of a grant from the Federal Transit Administration through Ozarks Regional Transit (ORT). The Transportation Division will construct transit shelter and bench pads along with sidewalks on Front Street and Huntsville Road.

This budget adjustment recognizes grant revenue in the amount of \$154,315.00.

<i>Terry J. Gulley</i> Division Head	8-16-13 Date	Prepared By: Ginny Gundlach Gundlach, Ginny
<i>[Signature]</i> Budget Director	8-16-13 Date	Reference: _____
<i>Terry J. Gulley</i> Department Director	8-16-13 Date	Budget & Research Use Only
<i>Paul A. Bohn</i> Finance Director	8-26-2013 Date	Type:    A    B    C    D    E    P
<i>[Signature]</i> Chief of Staff	8-21-13 Date	General Ledger Date _____
<i>Lionel Jordan</i> Mayor	8/21/13 Date	Posted to General Ledger _____ Initial                      Date
		Checked / Verified _____ Initial                      Date

**TOTAL BUDGET ADJUSTMENT                      154,315                      154,315**

Account Name	Account Number	Expense	Increase / (Decrease)		Project.Sub Number
			Expense	Revenue	
Sidewalks	4470.9470.5814.00	EX	154,315		02053 . 1301
Federal Grants-Capital	4470.0947.4309.00	RE		154,315	02053 . 1301
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					.
					.



**From:** Joel Gardner <jgardner@ozark.org>  
**To:** "tgulley@ci.fayetteville.ar.us" <tgulley@ci.fayetteville.ar.us>  
**Date:** 8/15/2013 3:09 PM  
**Subject:** New Freedom Funds

Terry, below is the statement from AHTD on the funds left and the time line... it appears that there is no set date (i.e. October 22nd) but more of a general guideline for when the funds need to be submitted... please remember, that when you submit the funds to me for reimbursement, I still need a few days to get those records to AHTD.. internally, I would like us to shoot for a mid to late October date to have the purchases completed by... this should ensure that ORT receives its reimbursement from the grant line item by the "Oct/Nov 2013" deadline...

According to ORT and AHTD records there is \$154,315.08 Federal remaining. This is an 80/20 match project.

We would like a project to be completed during the 2013 construction season (Oct/Nov 2013). After this time any remaining funds will be revised into an operating project .

Joel Gardner  
General Manager  
Ozark Regional Transit  
479-361-8742 (Office)  
479-236-0463 (Cellular)

**AGREEMENT OF UNDERSTANDING**

**BETWEEN**

**CITY OF FAYETTEVILLE**

**AND**

**OZARK REGIONAL TRANSIT**

In Cooperation with the  
U.S. Department of Transportation

**RELATIVE TO**

Implementation of Federal Transit Administration (FTA) " New Freedom" Program, (hereinafter called "the Project") .

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users provides Federal Transit funds for New Freedom projects through the Arkansas State Highway and Transportation Department and,

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

WHEREAS, it is the intent of the Sponsor to utilize New Freedom Federal aid funds to purchase materials for specified projects as agreed upon with Arkansas Highway and Transportation Department and Ozark Regional Transit.

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.

WHEREAS, it is understood that the Sponsor and the Ozark Regional Transit (hereinafter called "ORT") will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantaged Business Enterprises (DBEs) and that, as part of these requirement, ORT desires to set a goal for DBE participation in the project at 4.75% and related to the potential availability of DBEs desired areas of expertise.

IT IS HEREBY AGREED that the Sponsor and ORT 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 and maintenance of all sidewalks and transit shelters constructed by the City of Fayetteville Transportation Division. The City acknowledges that the Highway Department and Highway Commission have no duty or responsibility to users of these facilities, and therefore can have no legality related to the design, construction, maintenance, or operation of these sidewalks and transit shelters. 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 Huntsville Road and Front Street sidewalks and transit shelters, the City of Fayetteville agrees to pay this claim for the Highway Department or Highway Commission.
2. 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, disability, or national origin in compliance with the Civil Rights Act of 1964 (as amended) and 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs under the US DOT.
3. Ensure that all projects comply with Federal environmental policies and regulations including the determination of a Categorical Exclusion (CE), Finding of No significant Impact (FONSI) or Environmental Impact Statement (EIS).
4. 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.
5. Advertise for bids in accordance with federal procedures. \$1-3,000 verbal/written quotes ; \$3,001-\$25,000 – Three Verbal/Written Quotes, Over \$25,000 – Competitive Sealed Bids. Any Costs incurred by the Sponsor prior to receiving Notice to Proceed from the ORT are not eligible for reimbursement.
6. After bids are opened and reviewed, submit a certification, including all items noted, to the ORT and request concurrence in award of the contract.
7. 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 US DOT regulations.
8. Make payments to the contractor for work accomplished in accordance with the plans and specifications and then request reimbursement from the ORT.
9. "In-Kind" donation by the Sponsor may consist of appropriate salary rates for labor, engineering or administrative services, for the 20% local match requirement.

10. Upon completion of the project, provide proof of expenditures to the ORT for reimbursement.
11. Submit change orders to the contract to the ORT and Arkansas Highway and Transportation Department for review and approval for program eligibility prior to execution.
12. 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, and billing statements, and any other files necessary to document the performance and completion of the work. Such records shall be retained in accordance with the requirements of 49 CFR, Subtitle A, Part 18, Subpart C, Section 18.42 – Retention and access requirements for records.
13. Grant the right of access to Sponsor's records pertinent to this project and the right to audit by the ORT, AHTD and FTA officials.
14. Be responsible for 100% of all project costs incurred should the project not be completed as specified.
15. Be responsible for 100% of any and all expenditures which are declared non-participating in federal funds, including awards by the State Claims Commission.
16. Repay to the ORT the federal share of the cost of any portion of this project if the AHTD or FTA 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.
17. Retain total, direct control over the project (For 15 years after completion of the project) throughout the life of the improvements and not , without prior approval from the ORT:
  - 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 funds;
  - or cease maintenance or operation of the project due to the project's obsolescence.
18. Be responsible for satisfactory maintenance (including reasonable snow removal efforts) and operation of all improvements and for adopting regulations, ordinances and procedures 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.



19. Promptly notify the ORT if the project is rendered unfit for continued use.
20. After the ORT issues a Notice to Proceed, advertise for bids in accordance with federal procedures. (Or Fayetteville's procedures if stricter)
21. Notify the ORT and AHTD of any project adjacent to a State Highway. Obtain a clearance of project construction from the AHTD if project is adjacent to State Highway.

**THE ORT WILL:**

1. Be responsible for administering Federal funds.
2. Sponsor and provide environmental documentation for the project.
3. Sponsor and provide plans and specifications and bidding documentation for the project.
4. Upon receipt of the Sponsor's certification of right-of-way (property) ownership, provide the appropriate documentation to the file.
5. Issue Notice to Proceed to the Sponsor when to proceed with advertisement of the project for construction bids.
6. Review bid tabulations and concur in award of the construction contract for the project.
7. Visually verify (insofar as is reasonably possible) that the work meets contract requirements before reimbursement is made to the Sponsor.
8. Review and approve any necessary change orders for project/program eligibility.
9. Reimburse the Sponsor for all eligible construction costs.

IT IS FURTHER AGREED that should the Sponsor fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure will disqualify the Sponsor from receiving future Federal-aid funds administered by the ORT.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement on the

19<sup>th</sup> day of August 2013.

OZARK REGIONAL TRANSIT

City of Fayetteville



\_\_\_\_\_  
Joel Gardner  
Executive Director

\_\_\_\_\_

\_\_\_\_\_  
Sponsor's Attorney

### NOTICE OF NONDISCRIMINATION

The ORT 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 ORT 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: [joanna.nelson@arkansashighways.com](mailto:joanna.nelson@arkansashighways.com).

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille. Free language assistance for Limited English Proficient individuals is available upon request.