

**PROJECT AGREEMENT
BETWEEN
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF BROKEN ARROW**

This Project Agreement (“Agreement”) is made by and between the Oklahoma Department of Transportation, hereinafter referred to as the “Department,” and the City of BROKEN ARROW, hereinafter referred to as the “City,” which may be referred to collectively as the “Parties,” for the following intents and purposes and subject to the following terms and conditions, to wit:

Project Type	Div	County	JP No	Project No.	Work Type	Description
ENHANCEMENT	08	TULSA	33035(04)	TAP-272E(233)IG	PEDESTRIAN IMPROVEMENTS	BROKEN ARROW: MAIN STREET BICYCLE FACILITIES

WITNESSETH

WHEREAS, the Department is charged under the laws of the State of Oklahoma with construction and maintenance of State Highways; and,

WHEREAS, the Department is, by terms of agreements with the Federal Highway Administration, responsible for the management and construction of certain federally funded projects within the corporate limits of cities within the State of Oklahoma; and,

WHEREAS, the City has been identified as the beneficiary and sub-recipient of such federally funded project; and,

WHEREAS, receipt of the benefits of this project will require that the City assume certain financial responsibilities; and,

WHEREAS, the City is a municipal corporation created and existing under the constitution and laws of the State of Oklahoma; and,

WHEREAS, the laws and constitution of the State of Oklahoma impose financial restrictions on the City and its ability to ensure financial obligations; and,

WHEREAS, the Parties hereto recognize those financial limitations and agree that the financial obligations assumed by the City, by the terms of this Agreement, are enforceable only to the extent as may be allowed by law or as may be determined by a court of competent jurisdiction; and,

WHEREAS, it is understood that, by virtue of the Article 10, Section 26 of the Oklahoma Constitution, the payment of City funds in the future will be limited to appropriations and available funds in the then current City fiscal year.

NOW THEREFORE, subject to the limitations hereinbefore described, the Department and the City do agree as follows:

1. The City requested that certain street improvements be approved by the Oklahoma Transportation Commission, as were previously programmed by the City and **described as follows:**

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2. The City shall prepare, or cause to be prepared, plans for construction of this federal-aid project and agrees that all construction shall be in conformance with the furnished plans, which are incorporated with and made part of this Agreement.
3. The City agrees that the furnished plans at the time of bidding, are at a minimum, in compliance with the current Oklahoma Department of Transportation Standard Specifications for Highway Construction.
4.
 - A. The City shall be responsible for furnishing all right-of-way for this federal-aid project in compliance with all applicable laws, federal regulations, and guidelines established by the USDOT's FHWA's Office of Real Estate Services, including 42 USC, Chapter 61 (The Uniform Act) and 49 CFR Part 24, (Uniform Relocation Assistance and Real Property Acquisition For Federal and Federally Assisted Programs), as well as applicable State Statutes, Oklahoma Administrative Codes, and Department Policy; free and clear of all obstructions and encroachments; and that the City shall, at its sole expense, maintain the project after construction.
 - B. The City shall keep all permanent right-of-way shown on said plans free from any encroachment and take timely action to effect the removal of any encroachments upon notification by the Department, including all necessary legal action when required.
 - C. The City shall acquire all right-of-way, if any, be responsible for the total costs for removing and relocating outdoor advertising signs and for the relocation assistance payments to persons displaced by reason of the acquisition of right-of-way and be responsible for the removal or relocation of all utility lines on public or private rights-of-way to accommodate the construction of this project, and comply with these additional requirements:
 1. Transmit copies of the instruments, including all deeds and easements, to the Department prior to the advertisement of bids for construction.
 2. Comply with the provisions of 42 U.S.C.A. § 4601-4655 and 23 U.S.C.A. § 323 (as amended) and, further comply with 49 C.F.R. Part 24 in the acquisition of all necessary right-of-way and relocation of all displacees.

3. Convey title to the State of Oklahoma on all tracts of land acquired in the name of the City if the project is located on the State Highway System.

D. If the acquisition of right-of-way for this project causes the displacement of any person, business or non-profit organization, the City will provide and be responsible for the Relocation Assistance Program and for all cost associated with the relocation assistance payments. The Department will supply a list of approved service providers qualified to administer the Relocation Assistance Program. The City agrees to employ a service provider from the approved list and comply with all applicable rules, regulations, statutes, policies and procedures of both the United States and the State of Oklahoma. Before any relocation assistance payments are made, (if applicable), all files with parcels requiring relocation shall be audited by the Department. The Department shall be notified in writing within seven (7) days of the date of the offer to the property owner on any parcel which will require relocation assistance. Written notifications of offers to acquire shall be addressed to Project Manager, Right-of-Way Division, Oklahoma Department of Transportation, 200 N. E. 21st Street, Oklahoma City, Oklahoma 73105.

5. The City agrees to the location of the subject project and agrees to adopt the final plans for said project as the official plans of the City for the streets, boulevards, arterial highways and/or other improvements contained therein; and further, the City affirmatively states that it has or shall fully and completely examine the plans and shall hereby warrant to the Department, the City's complete satisfaction with these plans and the fitness of the plans to construct aforesaid project.
6.
 - A. The City certifies that the project design plans shall comply, and the project when completed will comply, with the requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§ 12101 – 12213), 49 CFR Parts 27, 37 and 38 and 28 CFR parts 35 and 36. The City shall be exclusively responsible for integrated ADA compliance planning for all City streets, sidewalks and other facilities provided for public administration, use and accommodation, which is required of recipients and sub-recipients by 49 CFR § 27.11. State highways continued through corporate limits of the City shall be included in the City's comprehensive compliance plans.
 - B. The CITY agrees to comply with the **The Americans with Disabilities Act Non-Discrimination Clause** which is incorporated into this agreement as the attached ADA Exhibit.
7. The Parties hereto agree to comply with all applicable laws and regulations meeting Environmental Protection Agency (EPA) requirements for pollution prevention, including discharges from storm water runoff on this project. The Department shall require the contractor who may be awarded the project to meet all Oklahoma Department of Environmental Quality (ODEQ) requirements for storm water runoff on this project. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the Storm Water Management Plan (SWMP) sheet and appropriate U.S. Geological Survey (USGS) topographic map contained in the plans constitute the SWMP for the project described previously in this document. Further, if

required, the Department shall require the contractor to file a Notice of Intent (NOI) for storm water discharges associated with construction activity under the Oklahoma Pollutant Discharges Elimination System (OPDES) General Permit with ODEQ, which authorizes the storm water discharges associated with construction activity from the construction site, and to develop, if required, a Storm Water Pollution Prevention Plan (SWPPP).

8. The City agrees that prior to the Department's advertising of the project for bids (as to that part of the project lying within the present corporate limits) it will:
 - (a) Grant to the Department and its contractors, the right-of-entry to all existing streets, alleys, and City owned property when required, and other rights-of-way shown on said plans.
 - (b) Remove at its own expense, or cause the removal of, all encroachments on existing streets as shown on said plans, including all signs, buildings, porches, awnings, porticos, fences, gasoline pumps and islands, and any other such private installations.
 - (c) To prohibit parking on that portion of the project within the corporate limits of the City, except as may be indicated in the plans or hereafter approved by agreement with the Department. The City further agrees not to install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the Federal Highway Administration and Manual on Uniform Traffic Control Devices (MUTCD).
 - (d) Comply with the Department's standards for construction of driveway entrances from private property to the highway, in accordance with the Department's manual entitled "Policy on Driveway Regulation for Oklahoma Highways", Rev. 5/96, 69 O.S. (2001) § 1210.
 - (e) Maintain all right of way acquired for the construction of this project, as shown on said plans, in a manner consistent with applicable statutes, codes, ordinances and regulations of the Department and the State of Oklahoma.
 - (f) The City shall have the authority pursuant to 69 O.S. 2001 § 1001 and 69 O.S. 2001 § 1004 to sell any lands, or interest therein, which were acquired for highway purposes as long as such sale is conducted in accordance with the above cited statutes. Prior written approval by the Chief, Right-of-Way Division for the Department shall be required before any sale is made.
9. The City further agrees and warrants to the Department that, subsequent to the construction of said project, the City will:
 - a. Erect, maintain and operate traffic control devices, including signals, signs and pavement markings only in accordance with 47 O.S. 2011 §§ 15-104- 15-106, and subject to agreement of the Department:
 - 1) In the event that any traffic signal installed hereunder is no longer needed for the purposes designated herein, then the traffic signal installed hereunder shall not be removed by the City to any other point other than that which is approved by the Department prior to such removal.

- 2) In the event there is no mutually agreed location for the reinstallation, the City will assume complete ownership of the equipment following removal if the installation is ten (10) years old or older. If the installation is less than ten (10) years old and:
 - a) In the event City desires total ownership of the equipment, the City shall reimburse the Department the original federal funding percentage share for the original equipment cost only, amortized for a ten (10) year service life, interest ignored, and assuming straight line depreciation.
 - b) In the event the City does not desire total ownership of the equipment, the City shall sell the equipment at public auction to the highest bidder. The City shall reimburse the Department the original federal funding percentage share of the proceeds of such sale.
- b. Subject to agreement with the Department, regulate and control traffic on said project, including but not limited to, the speed of vehicles, parking, stopping and turns only in accordance with 47 O.S. 2011 §§ 15-104- 15-106, and to make no changes in the provisions thereof without the approval of the Department. It shall be the responsibility of the City to notify the Department of any changes necessary to ensure safety to the traveling public.
- c. Maintain all drainage systems and facilities constructed, installed, modified or repaired in conjunction with this project or as may be otherwise necessary to ensure proper drainage for road surfaces constructed under the terms of this Agreement.
- d. Maintain all curbs and driveways abutting road surfaces constructed under the terms of this Agreement and all sidewalks adjacent thereto.
- e. Maintain all right-of-way areas adjacent to road surfaces, including erosion control and period mowing of vegetation, in a manner consistent with applicable codes, ordinances and regulations.
- f. Make ample provision annually for proper maintenance of items heretofore delineated as the responsibility of the City, including the provision of competent personnel and adequate equipment, and specifically, to provide all required special maintenance of the project during the critical period immediately following constructions.
- g. Keep all permanent right-of-way shown on said plans free from any encroachment and take immediate action to effect the removal of any encroachments upon notification by the Department.
- h. For any portion of the project encompassed under this agreement that is part of the State Highway System, the City shall maintain all that part of said project within the corporate limits of the City between the gutter lines and the right-of-way lines, and if no gutter exists, between the shoulder lines and the right-of-way lines, including storm

sewers, all underground facilities, curbs and mowing, all in accordance with 69 O.S. Supp. 1994 §901 and all other applicable law.

- i. On limited access highways where county roads or city streets extend over or under the highway or public roads are constructed on state rights-of-way but there is no immediate ingress and egress from the highway, responsibility shall be as follows:
 - (1) The public roads as defined in OAC 730:35-1-2 shall be maintained by the city or county and shall be included in their roadway mileage inventory.
 - (2) Where county roads or city streets extend over the highway, the roadway, approaches and bridge surfaces, including the deck, shall be maintained by the city or county. The approach guardrail, bridge structure, and highest clearance posting on the structure shall be maintained by the Department.
 - (3) Where county roads or city streets extend under the highway, the roadway approaches and advance signing shall be maintained by the city or county. The Department shall maintain the approach guardrail, bridge structure and surface, and the height clearance posting on the structure.
10. The City further agrees and warrants to the Department concerning any sign and highway facility lighting included as part of this project:
- a. The City will, upon notice from the Department Engineer, provide at its own expense all required electrical energy necessary for all preliminary and operational tests of the highway lighting facilities.
 - b. Upon completion of the construction of said project, the City will be responsible for the maintenance and cost of operation of these highway lighting facilities, including all appurtenances thereto and including the sign lighting facilities.
 - c. It is specifically understood and agreed that the highway lighting and sign lighting facilities specified hereunder shall be continuously operated during the hours of darkness, between sunset and sunrise, and shall not be altered, removed or be allowed to cease operation without the mutual written consent of the Department and the City.
 - d. The City agrees to provide, on a periodic schedule, an inspection, cleaning and re-lamping maintenance program to assure the maximum efficiency of the highway lighting facilities.
 - e. In the event that the highway lighting facilities installed hereunder are no longer needed for the purposes designated herein, then the highway lighting facilities installed hereunder shall not be removed by the City to any point other than which is approved by the Department prior to such removal.

- f. In the event there is no mutually agreed location for reinstallation, the City will assume complete ownership of the equipment following removal if the installation is twenty (20) years old or older. If the installation is less than twenty years old and:
- 1) In the event the City desires total ownership of the equipment, the City shall reimburse the Department the original federal funding percentage share of the original equipment costs only, amortized for a twenty (20) year service life, interest ignored, and assuming straight line depreciation.
 - 2) In the event the City does not desire total ownership of the equipment, the City shall sell the equipment at public auction to the highest bidder. The City shall reimburse the Department the original federal funding percentage share of the proceeds of such sale.
11. The City agrees, affirms and warrants to the Department that the City will be responsible, during the period of construction, for any repairs or maintenance to the approved detour route or any other street which may be required as a result of additional traffic.
12. The City agrees to comply with Title VI of the Civil Rights Act of 1964, 78 O.S. § 252.42, 42 U.S.C. §§ 200d et seq., and all requirements imposed by or pursuant to 49 CFR, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964."
13. The City agrees that it will, by resolution, duly authorize the execution of this Agreement by the proper officials and attach copies of such resolution to this Agreement.
14. To the extent permitted by the *Oklahoma Governmental Tort Claims Act*, Title 51 Oklahoma Statutes, Sections 151 *et seq.* and by Oklahoma Constitution Article 10, section 26 and as otherwise permitted by law, the City shall indemnify and save harmless the Department, its officers and employees, and shall process and defend at its own expense all claims, demands, or suits whether in law or equity brought against the City or the Department arising from the City's execution, performance, or failure to perform, and provisions of this agreement or alleged negligence in the location, design, construction, operation, or maintenance of a portion of the City Street System within the corporate limits of the City. Provided, nothing herein shall require the City to reimburse the Department for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Department. When any alleged act, omission, negligence, or misconduct may be subject to the limitations, exemptions, or defenses which may be raised under the *Oklahoma Governmental Tort Claims Act*, 51 O.S. § 151 et seq., all such limitations, exemptions, and defenses shall be available to and may be asserted by City. No liability shall attach to the Department except as expressly provided herein.
15. Based on an estimated total construction cost plus construction inspection cost of Six-Hundred-Sixty-Thousand-Seven-Hundred-Eight Dollars (\$660,708), it is agreed the project referenced above will be financed as follows:

- Federal Transportation Alternatives Program (TAP) funds shall be used to finance up to 80% of the federally participating construction costs, or an amount not to exceed Three-Hundred-Forty-Thousand-Two-Hundred-Twenty-One Dollars (\$340,221).
 - City funds provided by the City shall be provided to finance the balance of the eligible participating project construction costs, estimated at Three-Hundred-Twenty-Thousand-Four-Hundred-Eighty-Seven-Dollars (\$320,487). The CITY shall also provide 100% of any federally non-participating costs, estimated at Zero-Dollars (\$0.00). Total City funds are currently estimated at Three-Hundred-Twenty-Thousand-Four-Hundred-Eighty-Seven-Dollars (\$320,487). The estimated City funds shall be placed on deposit with the DEPARTMENT upon execution of this agreement and receipt of the Department's invoice, prior to advertising the project for bid.
16. a) It is understood by the City and the Department that the funding participation stipulated herein may be altered due to bid prices, construction supervision costs and federally non-participating costs incurred during construction.
- b) The DEPARTMENT, using its own forces or the services of others, will supervise and inspect all work performed by the construction contractor and will provide such engineering, inspection and testing services as may be required to ensure that the construction of the project is accomplished in accordance with the approved PS&E. Actual supervision and inspection costs shall be charged to the project and financed as described in PARAGRAPH 15 of this agreement.
- c) The City will be responsible for payment of estimated local funding prior to advertising the project for bid. Upon final acceptance of this project, the amount of federal funds and the amount previously deposited by the City will be deducted from the total cost and a refund will be made by the Department to the City or additional funding will be requested from the City. The City agrees to make arrangements for payment of any Department invoice within 45 days of receipt.
17. It is understood by the City that only those DEPARTMENT administered funding sources specified in Paragraph 15 of this agreement shall be made available for the financing of this project. All other costs are the responsibility of the CITY. No STATE funds are allocated to this project.
18. Upon approval of this Agreement and the plans, specifications and estimates by the City, Department and the Federal Highway Administration, if applicable, the Department shall agree to advertise and let the contract for this project in the usual and customary legal manner. It is agreed that the project herein described is proposed to be financed as previously set forth, and that this Agreement, all plans, specifications, estimates of costs, acceptance of work, payments and procedures in general hereunder are subject in all things at all times to all federal laws, regulations, orders and approvals as may be applicable hereto.
19. The Department agrees to construct said project in strict accordance with the plans furnished and approved by the City, provided that upon consultation with and agreement by the City, the Department shall have the right to make such changes in the plans and specifications as are

necessary for the proper construction of the project. The Department shall provide competent supervision at all times that the work is in progress. The City shall have inspectors on the project site as the City determines necessary to ensure construction of the project to the satisfaction of the City and shall have representatives available for consultation with the Department representatives to cooperate fully to the end of obtaining work strictly in accordance with the City's approved plans and specifications.

20. The City agrees that it will intervene as a party defendant in all actions where a contractor may allege delay due to failure of the City to accomplish timely utility relocations, site conditions which are not represented on the plans or plan errors which impact on project constructability, whether in the District Court or in an alternative dispute resolution forum, will defend all such actions and will pay all damages relating to delay as may be assessed by such court or alternative dispute resolution forum against the City for its adjudged failure.
21. Failure by the City to fulfill its responsibilities under this Agreement will disqualify the City from future participation in any Federal-aid project. Federal funds are to be withheld until such time as the deficiencies in regulations have been corrected or the improvements to be constructed under this Agreement are brought to a satisfactory condition of maintenance.
22. It is further specifically agreed between the City and the Department that the project will be built in accordance with the plans and specifications, and upon final acceptance by the City and the Department of this project, the City does hereby accept full, complete and total responsibility for maintenance of this project as provided in this Agreement. The City does not waive any rights against any contractor(s) with respects to defects, hidden or otherwise, in materials or workmanship. The City does not, pursuant to this provision or any other provision in this Agreement, waive its sovereign immunity or any exemption from, exception to or limitation of liability as provided in the Governmental Tort Claims Act.
23. The Secretary of the Department may terminate this Agreement in whole or, from time to time, in part whenever:
 - a. The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
 - b. The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
 - c. The contractor is prevented from proceeding with the work by reason of a preliminary, special or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
 - d. The Secretary determines that such termination is in the best interest of the State.

