

**STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION  
PROJECT MAINTENANCE, FINANCING, AND RIGHT-OF-WAY AGREEMENT  
SUPPLEMENT #2**

BROKEN ARROW: 23RD. ST. (193RD E. AVE.) - 71ST TO 81ST.  
AND  
193RD E. AVE.(23RD STREET) BEG @ 81ST ST. SOUTH & EXT TO 101ST ST SOUTH

**Project No.: STP-172N(455)IG**

**State Job No.: 26308(04)(05)(06)(07)**

This agreement, made the day and year last written below, by and between the City of **BROKEN ARROW**, hereinafter referred to as the Sponsor, and the Department of Transportation of the State of Oklahoma, hereinafter referred to as the Department, for the following intents and purposes and subject to the following terms and conditions, to wit:

**WITNESSETH**

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

Project Type	Div.	County	JP No	Project No.	Work Type	Description
CITY STREET	08	TULSA	26308(04)	STP-172N(455) IG	GRADE,DRAIN, BRIDGE & SURFACE	BROKEN ARROW: 23RD. ST. (193RD E. AVE.) - 71ST TO 81ST.

**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 Sponsor 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 Sponsor assume certain financial responsibilities; and,

**WHEREAS**, the Sponsor 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 Sponsor 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 Sponsor, 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 Sponsor funds in the future will be limited to appropriations and available funds in the then current Sponsor fiscal year.

**NOW, THEREFORE:** the Department and the Sponsor, in consideration of the mutual covenants and stipulations as set forth herein, do mutually promise and agree as follows:

#### **SECTION 1: PROJECT AGREEMENT**

1.1 If applicable, the Department will recommend approval of the project by the Federal Highway Administration.

1.2 The Sponsor agrees to comply with Title VI of the Civil Rights Act of 1964, 78 Stat. § 252, 42 U.S.C. § 2000d et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21 - "Nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act 1964".

1.3 The DEPARTMENT and SPONSOR mutually recognize that each party is a governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. § 151 et seq.). The DEPARTMENT and SPONSOR hereby mutually agree that each is and may be held severally liable for any and all claims, demands, and suits in law or equity, of any nature whatsoever, paying for damages or otherwise, arising from any negligent act or omission of any of their respective employees, agents or contractors which may occur during the prosecution or performance of this Agreement to the extent provided in the Governmental Tort Claims Act. Each party agrees to severally bear all costs of investigation and defense of claims arising under the Governmental Tort Claims Act and any judgments which may be rendered in such cause to the limits provided by law. Nothing in this section shall be interpreted or construed to waive any legal defense which may be available to a party or any exemption, limitation or exception which may be provided by the Governmental Tort Claims Act.

1.4 The Sponsor understands that should it fail to fulfill its responsibilities under this Agreement, such a failure will disqualify the Sponsor from future Federal-aid funding participation on any proposed project. Federal-aid funds are to be withheld until such a time as an engineering staff, satisfactory to the Department has been properly established and functioning, the deficiencies in regulations have been corrected or the improvements to be constructed under this Agreement are brought to a satisfactory condition of maintenance.

## **SECTION 2: ENGINEERING RESPONSIBILITIES**

2.1 The Sponsor shall provide professional engineering services for the development of the Plans, Specifications and Estimates (PS&E) for this project. Design engineering for this project will be performed under the supervision of the Sponsor. Sponsor warrants to the Department that they will review the plans and will certify that the plans are acceptable to the Sponsor and are in full compliance with current standards and specifications.

2.2 Progress payments will be made to the consultant by the DEPARTMENT upon receipt of a properly executed claim form, approved by the SPONSOR, accompanied by suitable evidence of the completion of the work claimed, as detailed in the engineering contract.

2.3 The SPONSOR agrees to hold the Federal Government and the DEPARTMENT harmless from, and shall process and defend at its own expense, all claims, demands, or suits, whether at law or equity brought against the SPONSOR, the DEPARTMENT, or Federal Government, arising from the SPONSOR's execution, performance, or failure to perform any of the provisions of this Agreement, or arising by reason of the participation of the DEPARTMENT or Federal Government in the project, PROVIDED, nothing herein shall require the SPONSOR to reimburse the DEPARTMENT or Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the DEPARTMENT.

2.4 When any alleged act, omission, negligence, or misconduct may be subject to the limitations, exemptions, or defenses which may be raised under the Governmental Tort Claims Act, 51 O.S. Sec. 151, et seq., all such limitations, exemptions, and defenses shall be available to and may be asserted by the SPONSOR. No liability shall attach to the DEPARTMENT or Federal Government except as expressly provided herein.

2.5 The Sponsor agrees to the location of the subject project and agrees to adopt the final plans for said project as the official plans of the Sponsor for the streets, boulevards, arterial highways and/or other improvements contained therein; and further,

the Sponsor affirmatively states that it has or shall fully and completely examine the plans and shall hereby warrant to the Department, the Sponsor's complete satisfaction with these plans and the fitness of the plans to construct aforesaid project.

2.6 The Sponsor 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 Sponsor shall be exclusively responsible for integrated ADA compliance planning for all Sponsor 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 Sponsor shall be included in the Sponsor's comprehensive compliance plans.

2.7 To the extent permitted by law, all data prepared under this agreement shall be made available to the Department without restriction or limitation on their further use, with exception of any documents or information that would be considered attorney/client privileged by the Sponsor.

2.8 The Department will conduct the environmental studies and prepare the National Environmental Protection Act documents as required for federally funded projects.

2.9 The Department will forward the environmental documents to FHWA for approval if applicable.

### **SECTION 3: LAND ACQUISITION AND UTILITY RELOCATION**

3.1 The Sponsor warrants to the Department that, they have or will acquire all land, property, or rights-of-way needed for complete implementation of said project, free and clear of all obstructions and encumbrances and in full accordance with the Department's guidelines for Right-of-Way Acquisition on Federal-Aid Projects, the Uniform Relocation Act, the National Environmental Protection Act and all other applicable local, state and federal regulations.

3.2 The Sponsor shall be responsible for ensuring all proper tax documentation is filed and issued to recipients of funds paid on behalf of the Sponsor for Right-of-Way acquisition for this project.

3.3 The Sponsor warrants to the Department that it is knowledgeable of and will comply with the provisions of 42 U.S.C.A., Section 4601-4655 and 23 U.S.C.A., Section 323 (as amended) and 49 C.F.R. Part 24 in the acquisition of all right-of-way and the relocation of any displacees.

3.4 The Sponsor shall remove, at its own expense, or cause the removal of, all encroachments on existing streets as shown on said plans, including all buildings, porches, fences, gasoline pumps, islands, and tanks, and any other such private installations and shall further remove or remediate any existing environmental contamination of soil and water from any source, known or unknown.

3.5 If the acquisition of Right of way for this project causes the displacement of any person, business or non-profit organization, the Sponsor warrants it will provide and be responsible for the Relocation Assistance Program and all costs associated with the relocation assistance program. The Department, upon request, will provide a list of service providers who have been prequalified to administer the Relocation Assistance Program. The Sponsor agrees to employ a service provider from the prequalified list provided by the Department. Prior to any relocation assistance payments to the Sponsor, all files with parcels requiring relocation assistance shall be submitted to the Department for audit and compliance review. The Sponsor shall notify the Department within seven (7) days of the date of an offer to acquire being provided to a property owner(s) on any parcel which will require relocation assistance. Written notifications regarding service providers, in-house personnel, appeals, offers to acquire or other related correspondence shall be properly addressed and remitted as follows:

Oklahoma Department of Transportation  
Local Government Division  
200 N.E. 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105-3204

3.6 The Sponsor warrants that any procurement, using federal funds, of property, goods or professional and personal services required for this project will be acquired by the Sponsor in compliance with the federal procurement Regulations at 40 USC 1101-1104 (Brooks Act) and the Regulations for Administration of Engineering and Design Related Service Contracts at 23 C.F.R. Part 172, as well as provisions of State purchasing laws applicable to the Sponsor.

3.7 The Sponsor will certify to the Department prior to establishing a letting date that all existing utility facilities (if any) have been properly adjusted in full accordance with the Department's Right-of-Way and Utilities Division policies and procedures to accommodate the construction of said project; and will be solely responsible for payment of any and all contractor expenses, claims, suits and/or judgments directly resultant from any actual utility relocation delays.

3.8 The Sponsor 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.

3.9 The Sponsor agrees that if any property acquired utilizing Federal funding is disposed of or is no longer used in the public interest the Sponsor shall reimburse the Department at the current fair market value.

3.10 The Sponsor agrees to;

- Transmit copies of the instruments, including all deeds and easements, to the Department prior to the advertisement of bids for construction.
- 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.
- Convey title to the State of Oklahoma on all tracts of land acquired in the name of the Sponsor if the project is located on the State Highway System.

#### **SECTION 4: FUNDING SUMMARY**

4.1 The Department and the Sponsor agree that the project will be financed at a INCOG total estimated cost of **\$13,235,137**, as described below:

## Old Funding Table

FUNDING SOURCE =>			INCOG STBG		DISTRICT 8		CITY OF BROKEN ARROW	
STATE JOB PIECE NO.	DESCRIPTION	TOTAL ESTIMATED COST	SHARE (%)	AMOUNT	SHARE (%)	AMOUNT	SHARE (%)	AMOUNT
26308(05)	Design -	\$1,265,415	80	\$1,012,332	0	\$0	20	\$253,083
26308(06)	Right-of-Way -	\$2,079,086	80	\$1,663,269	0	\$0	20	\$415,817
26308(07)	Utilities -	\$500,000	80	\$400,000	0	\$0	20	\$100,000
26308(04)	Construction - (With 6% Inspection)	\$10,824,421	80 Capped AT	\$8,659,536	0	\$0	Remainder	\$2,164,885
28853(04)*	District 8 Money Only (Construction)	\$4,000,000	0	\$0	Not to Exceed	\$4,000,000	0	\$0
<b>Total</b>		<b>\$18,668,922</b>	<b>Total=&gt;</b>	<b>\$11,735,137</b>	<b>Total=&gt;</b>	<b>\$4,000,000</b>	<b>Total=&gt;</b>	<b>\$2,933,785</b>

\*Funding was added from JP28853(04) from supplement 1

## New Funding Tabel

FUNDING SOURCE =>			INCOG STBG		DISTRICT 8		CITY OF BROKEN ARROW	
STATE JOB PIECE NO.	DESCRIPTION	TOTAL ESTIMATED COST	SHARE (%)	AMOUNT	SHARE (%)	AMOUNT	SHARE (%)	AMOUNT
26308(05)	Design -	\$1,265,415	80	\$1,012,332	0	\$0	20	\$253,083
26308(06)	Right-of-Way -	\$2,079,086	80	\$1,663,269	0	\$0	20	\$415,817
26308(07)	Utilities -	\$500,000	80	\$400,000	0	\$0	20	\$100,000
26308(04)	Construction - (With 6% Inspection)	\$12,324,421	80 Capped AT	\$10,159,536	0	\$0	Remainder	\$2,164,885
28853(04)	District 8 Money Only (Construction)	\$4,000,000	0	\$0	Not to Exceed	\$4,000,000	0	\$0
<b>Total</b>		<b>\$20,168,922</b>	<b>Total=&gt;</b>	<b>\$13,235,137</b>	<b>Total=&gt;</b>	<b>\$4,000,000</b>	<b>Total=&gt;</b>	<b>\$2,933,785</b>

\*\* This supplement was due to the City of Broken Arrow postponing JP30917(04) and moving partial funding to the construction of 26308(04).

4.2 Furthermore, the Department and the Sponsor agree that actual INCOG STBG costs incurred by project phases **JP 26308(04,05,06,07)** may exceed initial estimates. Costs between these project phases will be administratively adjusted based on actual cost of each phase, within the total cost of this agreement, without formal supplemental agreement, in so far as the total project agreement is not exceeded.

4.3 It is understood by the Sponsor and the Department that the funding participation stipulated herein may be altered due to bid prices, actual construction supervision costs and non-participating costs incurred during construction. The Sponsor will be responsible for payment of any estimated local funding prior to advertising the project for bid. Upon final acceptance of this project, the total project cost will be determined, and the final amount of local funds (if any) will be determined by the Department's Comptroller per the terms of this agreement. A refund will then be made by the Department to the Sponsor or additional funding will be requested. The Sponsor agrees to make arrangements for payment of any Department invoice within 45 days of receipt.

## **SECTION 5: CONSTRUCTION RESPONSIBILITIES**

5.1 The Sponsor agrees to comply with all applicable laws and regulations necessary to meet the Oklahoma Department of Environmental Quality (ODEQ) requirements for pollution prevention including discharges from storm water runoff during the planning and design of this project. Further, the Sponsor agrees and stipulates as stated in the ODEQ's *General Permit OKR10*, dated September 13, 2017 or latest revision, to secure a storm water permit with the ODEQ for utility relocations, when required. It is also agreed that the storm water management plan for the project previously described in the document includes project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the site specific storm water pollution prevention plan and the appropriate location map contained in the utility relocation plans.

5.2 The Sponsor's responsibility for environmental cleanup will be a continuing responsibility to remediate any and all known and unknown environmental damage throughout the duration of this contract with the Department in compliance with State and federal regulations.

5.3 The roadway improvements and all devices specified herein shall not be altered, removed, or cease to be operative without mutual written consent of the Department and the Sponsor.

5.4 Upon approval of this AGREEMENT and the plans, specifications, and estimates by the Sponsor, the Department, and the Federal Highway Administration (if applicable), the Department will advertise and let the contract for this project in the usual and customary legal manner. It is agreed that the projects herein contemplated are proposed to be financed as previously described, and that this agreement, all plans, specifications, estimate of costs, acceptance of work, payments, and procedure in general hereunder are subject in all things at all times to all local, state and Federal laws, regulations, orders, approvals as may be applicable hereto.



5.5 The Department shall provide a copy of the executed construction contract to the Sponsor, upon receipt of a written request.

5.6 The Department will notify the Sponsor of pre-bid dates, bid opening dates, and Transportation Commission award dates in writing upon receipt of a written request.

5.7 The Sponsor 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:

- Grant to the Department and its contractors, the right-of-entry to all existing streets, alleys, and Sponsor owned property when required, and other rights-of-way shown on said plans.
- 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.
- Prohibit parking on that portion of the project within the corporate limits of the Sponsor, except as may be indicated in the plans or hereafter approved by agreement with the Department. The Sponsor 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).
- 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.
- 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.
- The Sponsor 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.

5.8 The Sponsor further agrees and warrants to the Department that, subsequent to the construction of said project, the Sponsor will:

- 1) 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:
  - a) 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 Sponsor to any other point other than that which is approved by the Department prior to such removal.
  - b) In the event there is no mutually agreed location for the reinstallation, the Sponsor 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:
    - 1) In the event the Sponsor desires total ownership of the equipment, the Sponsor 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.
    - 2) In the event the Sponsor does not desire total ownership of the equipment, the Sponsor shall sell the equipment at public auction to the highest bidder. The Sponsor shall reimburse the Department the original federal funding percentage share of the proceeds of such sale.
- 2) 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 Sponsor to notify the Department of any changes necessary to ensure safety to the traveling public.
- 3) 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.
- 4) Maintain all curbs and driveways abutting road surfaces constructed under the terms of this Agreement and all sidewalks adjacent thereto.

- 5) 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.
- 6) For any portion of the project encompassed under this agreement that is part of the State Highway System, the Sponsor shall maintain all that part of said project within the corporate limits of the Sponsor 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.
- 7) 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:
  - a. 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.
  - b. 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.
  - c. 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.

5.9 The Sponsor further agrees and warrants to the Department concerning any sign and highway facility lighting included as part of this project:

- 1) The Sponsor 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.
- 2) Upon completion of the construction of said project, the Sponsor 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.

- 3) 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 Sponsor.
- 4) The Sponsor 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.
- 5) 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 Sponsor to any point other than which is approved by the Department prior to such removal.
- 6) In the event there is no mutually agreed location for reinstallation, the Sponsor 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:
  - a) In the event the Sponsor desires total ownership of the equipment, the Sponsor 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.
  - b) In the event the Sponsor does not desire total ownership of the equipment, the Sponsor shall sell the equipment at public auction to the highest bidder. The Sponsor shall reimburse the Department the original federal funding percentage share of the proceeds of such sale.

5.10 The Department will appoint competent supervision and inspection of the construction 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 Plans, Specifications and Estimates. The Department reserves the right to make such changes in said plans as may be necessary for the proper construction of said project.

- 1) The Sponsor agrees to provide such competent supervision as the Sponsor deems necessary during times that the work is in progress to insure the completion of the

project to the Sponsor's satisfaction and the Sponsor's representatives and the Department's representatives will cooperate fully to the end of obtaining work strictly in accordance with the plans and specifications.

- 2) The Sponsor will make ample provisions annually for the proper maintenance of said project, including the provision of competent personnel and adequate equipment, specifically, to provide all required maintenance of the project during the critical period immediately following construction and to keep the facility in good and safe condition for the benefit of the traveling public.
- 3) The Sponsor warrants to the Department that it will periodically review the adequacy of the aforesaid project to ensure the safety of the traveling public and should the Sponsor determine that further modifications or improvements be required, the Sponsor shall take such actions as are necessary to make such modifications or improvement. When operation modifications are required which in the opinion of the Department exceed the capability of the Sponsor's staff, the Sponsor agrees to retain, at the sole expense of the Sponsor, competent personnel for the purpose of bringing the improvement up to the proper standard of operation.
- 4) The Sponsor warrants and agrees that upon completion of the aforesaid project, the Sponsor assumes any and all financial obligations for the operation, use, and maintenance of the aforesaid project.

## **SECTION 6: NON-DISCRIMINATION CLAUSE**

6.1 During the performance of this Agreement, the Sponsor, for itself, its assignees and successors in interest, agrees as follows:

1) **Compliance with Regulations:**

The Sponsor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2) **Nondiscrimination:**

The Sponsor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The Sponsor shall not participate either directly or indirectly, in the discrimination

prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in appendix B of the Regulations.

3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:**

In all solicitations, either by competitive bidding or negotiation, made by the Sponsor for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor or subcontractor or supplier shall be notified by the Sponsor of the Sponsor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, national origin, disability/handicap, or income status.

4) **Information and Reports:**

The Sponsor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Sponsor is in the exclusive possession of another who fails or refuses to furnish this information, the Sponsor shall so certify to the State Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5) **Sanctions for Noncompliance:**

In the event of the Sponsor's noncompliance with the nondiscrimination provisions of this contract, the State Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Sponsor under the contract until the Sponsor complies and/or
- b. Cancellation, termination, or suspension of the contract in whole or in part.

6) **Incorporation of Provisions:**

The Sponsor shall include the provisions of paragraphs 1 through 6 in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant

thereto. The Sponsor shall take such action with respect to any contract or subcontract or procurement as the State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Sponsor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Sponsor may request the State Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Sponsor may request the United States to enter into such litigation to protect the interests of the United States.

## **SECTION 7: TERMINATION**

7.1 This agreement may be terminated by any of the following conditions:

- a) By mutual agreement and consent, in writing of both parties.
- b) By the Department by written notice to the Sponsor as a consequence of failure by the Sponsor to perform the services set forth herein in a satisfactory manner.
- c) By either party, upon the failure of the other party to fulfill its obligations as set forth herein.
- d) By the Department for reasons of its own and not subject to the mutual consent of the Sponsor upon five (5) days written notice to the Sponsor.
- e) By satisfactory completion of all services and obligations described herein.

7.2 The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the Department and the Sponsor under this agreement. If the potential termination of this agreement is due to the failure of either the Department or the Sponsor to fulfill their obligation as set forth herein, the non-breaching party will notify the party alleged to be in breach that possible breach of agreement has occurred. The party alleged to be in breach should make a good faith effort to remedy that breach as outlined by non-breaching party within a period mutually agreed by each party.

## **SECTION 8: GOVERNING LAW AND VENUE**

8.1 Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance, or enforcement of this Contract shall be governed by the laws of the State of Oklahoma and the applicable rules, regulations, policies and procedures of the Oklahoma Transportation Commission. Venue for any action, claim, dispute or litigation, mediation or arbitration shall be in Oklahoma County, Oklahoma.

**SECTION 9: DISPUTE RESOLUTION**

9.1 The parties hereto have entered into this Agreement in the State of Oklahoma and the laws of the State of Oklahoma shall apply. The parties agree to bargain in good faith in direct negotiation to achieve resolutions of any dispute and, if such efforts are unsuccessful, to retain a neutral mediation service to mediate the dispute prior to the filing of any court action. Mediation shall be conducted in the Oklahoma City area and the costs of such mediation shall be borne equally by the parties. If mediation is not successful, venue for any action brought to enforce the terms of this Agreement shall be in Oklahoma County, State of Oklahoma. Each party shall bear any cost and attorney fees incurred by the party in such litigation.

**SECTION 10: PRIOR UNDERSTANDINGS**

10.1 This agreement incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants or conditions and constitutes the full and complete understanding and contractual relationship of the parties.

**SECTION 11: AMENDMENTS OR MODIFICATIONS OF AGREEMENT**

11.1 No changes, revisions, amendments or alterations in the manner, scope of type of work or compensation to be paid by the DEPARTMENT shall be effective unless reduced to writing and executed by the parties with the same formalities as are observed in the execution of this Agreement.

**SECTION 12: RECORDS**

12.1 The Sponsor is to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its respective offices at all reasonable times, during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the DEPARTMENT and the State Auditor and Inspector, and copies thereof shall be furnished to the DEPARTMENT, if requested.

**SECTION 13: HEADINGS**

10.1 Article headings used in this Agreement are inserted for convenience of reference only and shall not be deemed a part of this Agreement for any purpose.

**SECTION 14: BINDING EFFECTS**

14.1 This contract shall be binding upon and inure to the benefit of the ODOT and the Sponsor and shall be binding upon their successors and assigns subject to the limitations of Oklahoma law.

**SECTION 15: SEVERABILITY**



15.1 If any provision, clause or paragraph of this Agreement or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses or paragraphs of this Agreement which are not affected by the determination. The provisions, clauses or paragraphs of this Agreement and any documents incorporated by reference are declared severable.

#### **SECTION 16: EFFECTIVE DATE**

16.1 This agreement shall become effective on the date of execution by the Department's Director or his designee.

**IN WITNESS WHEREOF**, the Director of the Department of Transportation, pursuant to authority vested in him by the State Transportation Commission, has hereunto subscribed his name as Director of the Department of Transportation and the Sponsor has executed same pursuant to authority prescribed by law for the Sponsor.

The Sponsor, City of Broken Arrow on this 20th of December, 2023, and the Department on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### THE CITY OF BROKEN ARROW

APPROVED AS TO FORM  
AND LEGALITY

By Graham Parker  
City Attorney

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Attest: City Clerk

(SEAL): Approved – THE CITY OF  
BROKEN ARROW

STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION

Recommended for Approval

\_\_\_\_\_  
Local Government Division Manager

\_\_\_\_\_  
Director of Capital Programs

APPROVED AS TO FORM  
AND LEGALITY

APPROVED

\_\_\_\_\_  
General Counsel

\_\_\_\_\_  
Deputy Director