

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

**SH-51 (BROKEN ARROW EXPRESSWAY) EASTBOUND OFF-RAMP TO LYNN
LANE (177TH E AVE./9TH ST.)**

Project Number TS 1801 – Approved by the City of Broken Arrow on April 23, 2018

THIS AGREEMENT, made the day and year last written below, by and among the City of Broken Arrow, hereinafter referred to as the CITY 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 DEPARTMENT is in receipt of a request from the CITY to rehabilitate the traffic signals at 9th St and SH-51 ramps, and to restripe the eastbound SH-51 off-ramp to 9th St. to allow for one additional left turn lane for a total of two left turn lanes and one right turn lane.

WHEREAS, the DEPARTMENT, as part of its responsibilities for the construction and maintenance of state highways considers it to be in its own interest to expedite the construction of the project in cooperation with the CITY and according to the stipulations set forth below;

WHEREAS, the CITY considers the additional left turn lane to be in the public and CITY interest;

NOW THEREFORE, subject to the limitations herein before described and the limitations of applicable Federal and State law, the DEPARTMENT and the CITY, 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 The CITY agrees to provide all plans, specifications and construction cost estimates for this project to rehabilitate the traffic signals at 9th St and SH-51 ramps, and to restripe the eastbound SH-51 off-ramp to 9th St. to allow for one additional left turn lane for a total of two left turn lanes and one right turn lane.

1.2 The CITY agrees to adjust, relocate, or cause the adjustment or relocation of all utility facilities, at the City's sole expense, as may be necessary to accommodate construction.

1.3 The CITY agrees to acquire, at the City's sole expense, any additional right-of-way or easements in behalf of ODOT, should said right-of-way be required for project construction.

1.4 The CITY warrants that all right-of-way needed for construction shall be free and clear of all obstructions and encumbrances, including, but not limited to: signs, debris, buildings, structures, utility poles and/or pipelines above or below the surface of the ground.

1.5 The CITY hereby certifies to the DEPARTMENT that the entirety of the project shall be constructed on public right-of-way.

1.6 The CITY assumes responsibility and costs related to environmental mitigation that may be required as part of this project.

1.7 The highway 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 CITY.

1.8 Upon completion of the project, the CITY will be responsible for the design, construction and maintenance of any sidewalk, additional driveway, traffic stripe, traffic/pedestrian signals or lighting in cooperation with, and with approval of the DEPARTMENT.

1.9 The CITY agrees to require the contractor to carry public liability insurance in a minimum amount of \$100,000.

1.10 The CITY agrees to participate with the DEPARTMENT in a future project to widen the eastbound off ramp to 9th St to a minimum of forty-six (46) feet for the length of the ramp that is configured with three lanes.

1.10.1 The CITY agrees to provide all design plans, specifications and construction cost estimates for this project. The DEPARTMENT is to be involved in the plan review process at 30%, 60%, and 90%.

1.10.2 The CITY agrees to adjust, relocate, or cause the adjustment or relocation of all utility facilities, at the City's sole expense, as may be necessary to accommodate construction.

1.10.3 The CITY agrees to acquire, at the City's sole expense, any additional right-of-way or easements in behalf of ODOT, should said right-of-way be required for project construction.

1.10.4 The CITY agrees to warrant that all right-of-way needed for construction shall be free and clear of all obstructions and encumbrances, including, but not

limited to: signs, debris, buildings, structures, utility poles and/or pipelines above or below the surface of the ground.

1.10.5 The CITY hereby certifies to the DEPARTMENT that the entirety of the project shall be constructed on public right-of-way.

1.10.6 The CITY assumes responsibility and costs related to environmental mitigation that may be required as part of this project.

1.10.7 The CITY agrees that any improvements made as part of this project will comply with the Americans with Disabilities Act.

1.10.8 The CITY agrees that this project will be ready to let for construction within two years of the signing of this agreement.

1.10.9 The DEPARTMENT agrees that State Funds shall be used to provide 50% of the final construction and construction management costs. The CITY agrees that local funds shall be used to provide their obligation of 50% of the final construction and construction management cost. The CITY shall deposit with the DEPARTMENT prior to the advertisement for bids, 50% of the total estimated cost of the project. Both parties agree that this is an estimated cost and the DEPARTMENT will request reimbursements based on actual costs.

1.10.10 Upon approval of this AGREEMENT and the plans, specifications, and estimates by the Federal Highway Administration (if applicable), the DEPARTMENT shall agree to advertise and let the contract for this project in the usual and customary 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 Federal laws, regulations, orders, approvals as may be applicable hereto.

SECTION 2: FEDERAL AND STATE LAWS

2.1 In the exercise of their respective rights and obligations under this agreement, the DEPARTMENT and the CITY agree to comply with all applicable Federal and State laws and regulations, including, but not limited to land acquisition requirements under the Federal Relocation Assistance and Real Property Acquisition Policies Act of 1970, environmental requirements under the National Environmental Policy Act (NEPA) of 1969 and Section 404 of the Clean Water Act of 1972 and Titles 23 and 49 of the Code of Federal Regulations.

SECTION 3: AMENDMENTS OR MODIFICATION OF AGREEMENT

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

SECTION 4: GOVERNING LAW AND VENUE

4.1 Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance, or enforcement of this agreement 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 5: DISPUTE RESOLUTION

5.1 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 filing court action. Mediation shall be conducted in the city of 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 Oklahoma County, State of Oklahoma. Each party shall bear any costs and attorney fees incurred by that party in such litigation.

SECTION 6: TERMINATION

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

6.1.1 By mutual agreement and consent, in writing of both parties.

6.1.2 By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

6.1.3 By satisfactory completion of all services and obligations described herein.

6.2 The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the DEPARTMENT and the CITY under this agreement. If the potential termination of this agreement is due to the failure of either the DEPARTMENT or the CITY 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 7: HEADINGS

7.1 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 8: BINDING EFFECTS

8.1 This agreement shall be binding upon and inure to the benefit of the DEPARTMENT and the CITY, severally, and shall be binding upon their successors and assigns, respectively, subject to the limitations of Oklahoma law.

SECTION 9: SEVERABILITY

9.1 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.

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IN WITNESS WHEREOF, the Chief Engineer/Deputy Director of the Department of Transportation, pursuant to authority vested in him by the Transportation Commission, has hereunto subscribed his name as Chief Engineer/Deputy Director of the Department of Transportation, and the City of Broken Arrow has executed same pursuant to authority prescribed by law.

The City of Broken Arrow on the _____ day of _____, 2018 and the DEPARTMENT on the _____ day of _____, 2018.


City of Broken Arrow

Mayor Date

ATTEST:

City Clerk Date

APPROVED:



City Attorney (Acting Deputy) Date

**OKLAHOMA DEPARTMENT
OF TRANSPORTATION**

ODOT Division VIII Engineer Date

ODOT Chief Engineer/Deputy Director Date

APPROVED AS TO FORM AND LEGALITY

General Counsel Date