

RESOLUTION NO. _____

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE
CITY OF NORMAN, OKLAHOMA:**

WHEREAS, it is in the best interest of the City of Norman, Oklahoma, to execute that certain project agreement for Job Piece Number 09031(05)(09), by and between the City of Norman and the Oklahoma Department of Transportation;

NOW THEREFORE, it is hereby resolved that the Mayor is hereby authorized and directed to execute the above described agreement on behalf of the City of Norman, and duly signed by the Mayor on this _____ day of _____, 20____.

CITY OF NORMAN

Mayor

ATTEST:

City Clerk

Approved as to form and legality this _____ day of _____, _____

City Attorney

**STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 09031(05)(09)**

**I-35/SH-9E INTERCHANGE RECONSTRUCTION AND CONSTRUCTION OF THE
STORM DRAINAGE DIVERSION STRUCTURE**

PROJECT NO. NHIPPY-0035-2(176) / JOB PIECE NO. 09031(05)

AND

**I-35/LINDSEY STREET INTERCHANGE RECONSTRUCTION AND BETTERMENTS
PROJECT NO. NHIPPY-0035-2(304) / JOB PIECE NO. 09031(09)**

THIS AGREEMENT, made the day and year last written below, by and among the City of Norman, 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 charged under the laws of the State of Oklahoma with the construction and maintenance of state highways and bridges; and,

WHEREAS, the **DEPARTMENT**, as part of its responsibilities for the construction and maintenance of state highways and bridges, must cooperate with the local entities of government to allow the location, construction and maintenance of mutual use facilities pursuant to Title 69 OS §304; and

WHEREAS, receipt of the benefits of this project will require that the **CITY** assume certain financial obligations; and,

WHEREAS, the **CITY** is a municipal corporation and charter city created and existing under the Constitution and laws of Oklahoma; and,

WHEREAS, the Constitution and laws of the State of Oklahoma impose fiscal limitations on the **CITY** and its ability to agree to financial obligations; and,

WHEREAS, the parties hereto recognize those fiscal 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 Oklahoma Constitution Article 10, Section 26, the payment of **CITY** funds in the future will be limited to appropriations and available revenues in the then-current **CITY** fiscal year;

NOW THEREFORE, subject to the limitations herein before described and the limitations of applicable Oklahoma 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 **DEPARTMENT** will request approval from the Transportation Commission for participation in the project that consists of I-35/SH-9E Interchange Reconstruction and the construction of the Storm Drainage Diversion Structure and I-35/Lindsey Street Interchange Reconstruction and Betterments.

1.2 The **DEPARTMENT** will recommend approval of the project by the Federal Highway Administration (FHWA).

1.3 The **CITY** shall by resolution, duly authorize the execution of this agreement by proper officials and attach copies of such resolution to this agreement.

1.4 The **CITY** shall each comply with Title VI of the Civil Rights Act of 1964, 78 O.S. § 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."

1.5 The **DEPARTMENT** and the **CITY** 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 **CITY** 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 officers 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.

SECTION 2: ENGINEERING RESPONSIBILITIES

2.1 The **DEPARTMENT** shall provide professional engineering services for the development of the Plans, Specifications and Estimates (PS&E) for the I-35/SH-9E Interchange and the I-35/Lindsey Street Interchange. The **CITY** shall provide professional engineering services for the development of the Plans, Specifications and Estimates (PS&E) for the Storm Drainage Diversion Structure.

2.1.1 The design and plans shall be subject to review and approval by the DEPARTMENT and FHWA and shall conform to current State and AASHTO policies and standards, as modified by the **DEPARTMENT**.

2.2 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.

2.3 The **DEPARTMENT** will conduct the environmental studies and prepare the National Environmental Protection Act documents as required.

2.4 The **DEPARTMENT** will forward the environmental documents to FHWA for approval.

SECTION 3: LAND ACQUISITION AND UTILITY RELOCATION

3.1 The **DEPARTMENT** warrants that, they have or will acquire all land, property, or rights-of-way in their respective jurisdictions 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 **CITY** shall remove, at its own respective expense, or cause the removal of, all encroachments on existing streets as shown on said plans.

3.3 In exchange for the consideration provided from and through the **DEPARTMENT**, the **CITY** shall convey title to the State of Oklahoma on all tracts of land acquired in the name of the respective city on the State or Federal Highway System (if any) in accordance with Oklahoma Administrative Code Title 730, Chapter 20, Section 730:20-1-2.

3.4 The **DEPARTMENT** warrants that utility adjustment costs are included as a part of the agreement and will certify prior to establishing a letting date that all existing utility facilities (if any) have been properly adjusted in full accordance with **DEPARTMENT** policies to accommodate the construction of said project prior to the beginning of any work 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.

SECTION 4: CONSTRUCTION RESPONSIBILITIES

4.1 The **CITY** 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. 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.

4.2 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 **CITY** with jurisdiction over that portion of the roadway improvement.

4.3 Upon approval of this agreement and the plans, specifications, and estimates by the Federal Highway Administration, the **DEPARTMENT** will 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 described in this agreement, 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 and approvals as may be applicable hereto.

4.4 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.

4.5 Upon completion of the project, the new roadway will be maintained by the appropriate jurisdiction in accordance with the Oklahoma Transportation Commission Policy.

SECTION 5: CONSTRUCTION FUNDING

5.1 The total estimated construction cost is \$81,494,082. The **DEPARTMENT** agrees to provide \$77,467,413. The **CITY** agrees that local funds shall be used to provide their obligation of \$4,026,669 which shall be deposited with the **DEPARTMENT** prior to the advertisement for bids.

5.2 It is understood by the **CITY** and the **DEPARTMENT** that the funding participation herein may be altered due to bid prices, construction supervision cost and other cost incurred during construction. The **CITY** will be responsible for payment of its required funding share within 21 days of receipt of a **DEPARTMENT** invoice. Upon final acceptance of this project, the amount of **DEPARTMENT** 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**.

SECTION 6: MAINTENANCE RESPONSIBILITIES FOR THE STORM WATER DRAINAGE DIVERSION STRUCTURE AND THE BETTERMENTS ON THE LINDSEY STREET BRIDGE

6.1 The parties agree that the purpose of the Storm Drainage Diversion Structure is to drain the accumulation of water during storm weather events from the **CITY's** streets and right-of-ways. This agreement allows the Storm Drainage Diversion Structure to be constructed on the **DEPARTMENT's** right-of-way at the **CITY's** expense because this is the most effectual location for the structure. It is understood that the **DEPARTMENT** will also construct separate drainage structures to accommodate storm water drainage of the I-35/SH9 right-of-way within this project. The **CITY** agrees herein that the **CITY** will be responsible for all of the labor and/or cost of the general repair and maintenance of the Storm Drainage Diversion Structure necessary to preserve the function of the Structure to drain **CITY's** streets. The **CITY** shall be responsible for any engineering assessments, studies or inspections of the Storm Drainage Diversion Structure after the project is constructed and is operational. The **DEPARTMENT** will cooperate with the **CITY** to provide access required for any maintenance conducted on the Storm Drainage Diversion Structure and the **CITY** will be responsible for providing notice to the public and/or traffic control related to the work zone warning or lane closings necessary to conduct maintenance activities on the **DEPARTMENT's** right-of-way consistent with the most recent MUTCD guidelines. The **CITY** also agrees that it will not allow the Storm Drainage Diversion Structure to interfere with storm water drainage from the **DEPARTMENT's** I-35/SH9 right-of-way, and will take corrective action at the **CITY's** expense to remove the interference or ameliorate the drainage capability of the Structure if necessary.

6.2 The **CITY** shall provide all associated maintenance for the betterments in the reconstructions of Lindsey Street over I-35. These betterments include Lindsey Street landscaping, waterproofing, specialty form liners, specialty staining and concrete embossing.

SECTION 7: PRIOR UNDERSTANDING

7.1 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 8: AMENDMENTS OR MODIFICATION OF AGREEMENT

8.1 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 9: GOVERNING LAW AND VENUE

9.1 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 10: DISPUTE RESOLUTION

10.1 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 11: TERMINATION

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

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

11.1.2 By the **DEPARTMENT** by written notice to the **CITY** as a consequence of failure to perform the services set forth herein in a satisfactory manner.

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

11.1.4 By the **DEPARTMENT** for reasons of its own and not subject to the mutual consent of the **CITY** upon five (5) days written notice to the **CITY**.

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

11.2 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 12: RECORDS

12.1 The **CITY** 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: NOTICES

13.1 All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this agreement shall be in writing and shall be deemed to have been properly given or sent:

13.1.1 If intended for the **DEPARTMENT**, by mailing first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid addressed to:

Oklahoma Department of Transportation
 Division 3 Engineer
 Paul Rachel
 P.O. Box 549
 Ada, Oklahoma 74821-0549

13.1.2 If intended for the **CITY**, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to:

City of Norman
 Attn: Shawn O'Leary, Director
 Public Works Department
 201 West Gray, Building A
 Norman, Oklahoma 73069

SECTION 14: HEADINGS

14.1 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 15: BINDING EFFECTS

15.1 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 16: SEVERABILITY

16.1 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 17: EFFECTIVE DATE

17.1 This agreement shall become effective on the date of execution by the **DEPARTMENT's** Deputy Director/Chief Engineer or designee as the last party to execute this agreement.

THIS SPACE LEFT INTENTIONALLY BLANK

**STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 09031(05)(09)**

INVOICE

Make check PAYABLE, and MAIL TO: **Oklahoma Department of Transportation
Comptroller Division
200 N.E. 21st Street
Oklahoma City, OK 73105-3204**

To: City of Norman
Director Shawn O'Leary
201 West Gray, Building A – P.O. Box 370
Norman, Oklahoma 73069

Invoice Number: 09031(05)(09)

Division Name: Project Management Division

Date: 10/08/2014

Description - Explanation of Charge	Total
Due Date: 10/20/2014	
I-35/SH-9E Interchange Reconstruction and the construction of the Storm Drainage Diversion Structure Job Piece Number 09031(05)	\$ 3,762,284.00
I-35/Lindsey Street Reconstruction and Betterments Job Piece Number 09031(09)	\$ 264,385.00
<u>Cost Breakdown</u>	
Total Project Cost including E&C:	\$ 81,498,092.00
Total City of Norman Costs:	\$ 4,026,669.00
Amount previously paid by City of Norman:	\$ 0.00
<u>City of Norman Funds Now Due:</u>	<u>\$ 4,026,669.00</u>
Accounting Use Only	\$ 4,026,669.00

Purchaser Copy
 Remit with Payment
 Retain in Division
 To Comptroller

STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 09031(05)(09)

ATTACHMENT A

I-35 / Lindsey Street Interchange Betterments

Norman, Oklahoma

Estimate of Cost-Settlements

October 8, 2014

Planters, Columns	\$ 52,120
Water Proofing	\$ 10,000
Irrigation, Drainage	\$ 55,000
Form Liner, Texture, Staining, Stamps	\$ 81,265
Fotera Benches	\$ 32,000
Ornamental Fence	\$ 34,000
Total	\$ 264,385