

**PROJECT AGREEMENT
BETWEEN
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF NORMAN**

This Project Agreement ("Agreement") is made by and between the Oklahoma Department of Transportation, hereinafter referred to as the "Department," and the City of NORMAN, 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:

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 and a charter city 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 revenues 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 designated as Federal-Aid Project STPG-214E(018), State Job Number 29301(04) and which consist of actual improvements as follows:

**TRAFFIC SIGNALS
VIDEO DETECTION SYSTEMS AT SEVERAL SIGNALIZED INTERSECTIONS
THROUGHOUT THE CITY OF NORMAN**

2. The City has prepared, or caused 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 are, at a minimum, in conformance with the Oklahoma Department of Transportation 2009 Standard Specifications for Highway Construction.
4. The City agrees that the Parties have entered into a separate "Right-of-Way, Public Utility and Encroachment Agreement," which provides inter alia that the City is responsible for furnishing all right-of-way for this federal-aid project in compliance with 49 CFR Part 24, (Uniform Act), free and clear of all obstructions and encroachments; that the City shall, at its sole expense, maintain the project after construction; and that nothing contained herein shall be construed as modifying, altering, rescinding or abridging any portion of that agreement.
5. The City agrees to the location of the subject project and acknowledges receipt of and adopts the 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 fully and completely examined these plans and does 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 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 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).
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., 1991 §§ 15-104- 15-106, and subject to the 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 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.
10. The City further agrees and warrants to the Department concerning sign and highway facility lighting:
- 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. 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 the 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 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.
15. Based on an estimated total construction and 6% contract administration cost of Five Hundred Eighteen Thousand Dollars (\$518,000), the Department agrees that Federal-aid Surface Transportation Program funds shall be requested to provide 100% of the participating project cost. Federal funds are currently estimated at Five--Hundred-Eighteen-Thousand Dollars (\$518,000).

The City shall be responsible for 0% of the participating project costs, estimated at Zero Dollars (\$0) and 100% of any non-participating costs, estimated at Zero Dollars (\$0). Total City funds are currently estimated at Zero Dollars (\$0).
16. 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 non-participating costs incurred during construction. The City will be responsible for payment of its required funding share within 45 days of receipt of a Department invoice. 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.

17. It is understood by the City that no state funds are to be utilized in any phase or aspect of this project. Only City and federal funds are to be utilized.
18. Upon approval of this Agreement and the plans, specifications and estimates by the 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.
24. 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.

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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 City has executed same pursuant to authority prescribed by law for the City.

The City, on this _____ of _____, 2012, and the Department on the _____ day of _____, 2012.

The City of NORMAN,
an Oklahoma Municipal Corporation

Mayor

(SEAL)

ATTEST:

City Clerk

Approved as to Form and Legality:

City Attorney

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

The Americans with Disabilities Act Non-Discrimination Clause

The CITY assures that no qualified person with a disability shall, solely by reasons of their disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity administered by the CITY.

Specifically, the following discriminatory actions are prohibited:

- 1) In providing any aid, benefit, or service, CITY will not directly or through contractual, licensing, or other arrangements, on the basis of disability:
 - a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or service.
 - b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who do not have a disability.
 - c. Provide a qualified person with a disability an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons without disabilities.
 - d. Provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide the aids, benefits or services that are as effective as those provided to persons without disabilities.
 - e. Aid or perpetuate discrimination against a qualified person with a disability by providing financial or other assistance to an agency, organization, or person that discriminates on the basis of disability.
 - f. Deny a qualified person with a disability the opportunity to participate in conferences, planning or advising opportunities.
 - g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service.
- 2) For purposes of these assurances, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for disabled and nondisabled persons, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonable achievable.
- 3) Even if separate or different aids, benefits or services are available to persons with a disability, CITY will not deny a qualified person with a disability the opportunity to participate in the programs or activities that are not separate or different.
- 4) CITY will not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- a. That have the effect of subjecting qualified persons with a disability to discrimination on the basis of disability,
 - b. That have the purpose or effect of defeating or substantially reducing the likelihood that persons with disabilities can benefit from the objectives of the program or activity, or
 - c. That yield or perpetuate discrimination against another recipient of federal funds if both recipients are subject to common administrative control or are agencies of the same State.
- 5) In determining the site or location of a facility, CITY will not make selections:
- a. That have the effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity, or
 - b. That has the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to persons with disabilities.
- 6) As used in these assurances, the aid, benefit or service provided under a program or activity includes any aid, benefit or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

Future Effect of Assurances

Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of Federal financial assistance, are bound by the above assurances under the following circumstances:

- 1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the U.S. Department of Transportation, the instrument of conveyance shall include a covenant running with the land binding the recipient and subsequent transferees to comply with the requirements for so long as the property is used for the purpose of which the Federal financial assistance was provided or for a similar purpose.
- 2) When Federal financial assistance is used to purchase or improve real property, these assurances shall obligate the recipient to comply with the requirements and require any subsequent transferee of the property, who is using the property for the purpose for which Federal financial assistance was provided, to agree in writing to comply with the requirements. The obligations of the recipient and transferees shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.
- 3) When Federal financial assistance is provided in the form of, or is used to obtain, personal property, these assurances shall obligate the recipient to comply with the requirements for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

- 4) When Federal financial assistance is used for purposes other than to obtain property, these assurances shall obligate the recipient to comply with the requirements for the period during which the Federal financial assistance is extended to the program or activity.

Notice

CITY will take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with CITY that it does not discriminate on the basis of disability using the notice in Appendix A (Public Notice).

Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in agency publications and distribution of memoranda or other written communications.

Effect of State or local law

The obligation to comply with Section 504 of the Rehabilitation Act of 1973 is not obviated or affected by any State or local law.

