

## PROJECT AGREEMENT

This Agreement made the day and year last written below, 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 law 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 of such a 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 Oklahoma; and,

**Whereas**, the laws and constitution of the State of Oklahoma impose fiscal restrictions on the City and its ability to insure financial obligations; and,

**Whereas**, the PARTIES hereto recognized 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.

**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, 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-114B(302)AG, State Job Number 29010(04) and which consist of actual improvements as follows:

### **ROADWAY LIGHTING**

Roadway Lighting along Jenkins Ave from North of SH 9 to Constitution Street

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 a part of this Agreement.
3. The CITY agrees that the furnished plans are, as a minimum, in conformance with the Oklahoma Department of Transportation 2009 Standard Specification 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, 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, rescind, or abridging any portion of that agreement.
5. The CITY agrees to the location of the subject project and acknowledge 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

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complete satisfaction with these plans, and the fitness of the plans to construct the aforesaid project.

6. The CITY certifies that the project design plans comply, and the project when completed will comply, with the applicable provisions of the Department of Justice implementation plan of Title III of the Americans with Disabilities Act, (42 U.S.C. 12101-12213) as outlined in 28 CFR Part 35.
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. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work and the storm water pollution prevention plan sheet contained in the plans and the appropriate USGS topographic map constitute the storm water management plan for the project described previously in this document. The DEPARTMENT agrees to file jointly with the Contractor the Notice of Intent (NOI) for a general construction National Pollutant Discharge Elimination System (NPDES) permit with EPA which authorizes the storm water discharges associated with the industrial activity from the construction site identified in this document. Further, the CITY agrees as stipulated in Federal Register Vol. 57 No. 175 pg 41191, to co-permit with the DEPARTMENT when or if required to have daily operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions.
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).

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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 Section 15-104, 15-105 and 15-106, and subject to the 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 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 the CITY desires total ownership of the equipment, the CITY shall reimburse the DEPARTMENT for 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

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without the approval of the DEPARTMENT. It shall be the responsibility of the CITY to notify the DEPARTMENT of any changes necessary to insure 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 insure 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 periodic 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 construction.
  - 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, and by the DEPARTMENT, the CITY will be responsible for the maintenance and

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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 herein 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 a re-lamping maintenance program to assure the maximum efficiency of the highway lighting facilities.
- E. In the event that 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.

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 (20) 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

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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, U.S.C. §2000d-et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, of Secretary of Transportation, Part 21 - "Nondiscrimination in federally assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act 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. 1991 § 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 to 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.

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15. Based on an estimated total construction cost of \$377,400.00 (including construction inspection) the DEPARTMENT agrees that Federal-aid Surface Transportation Program funds shall be requested to provide 100% of the participating project costs (estimated at \$377,400.00). The City agrees that local funds shall be used to provide 0% of the participating project costs (estimated at \$0.00) and 100% of the non-participating project costs (estimated at \$0.00). The CITY's estimated total obligation is \$0.00 (Zero dollars and no cents) which shall be deposited with the DEPARTMENT prior to advertising for bids.
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. 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 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

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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 insure 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 the CITY 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 as 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 and understood 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 the maintenance of this project as provided in this Agreement.. The CITY does not waive any rights against any contractor(s) with respect to defects, hidden or otherwise, in materials or workmanship. The CITY does not, pursuant

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to this provision or any other provision in this Agreement, waive its sovereign immunity or any exemption from, exception to, or limitation of liability as provided in the Governmental Tort Claims Act.

23. The Secretary of the DEPARTMENT may terminate the contract 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 Department.

The CITY on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and  
the DEPARTMENT on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

APPROVED AS TO FORM  
AND LEGALITY

City of Norman

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk (Seal)

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/Chief Engineer

**RESOLUTION NO. R-1213-48**

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

THAT, WHEREAS it is in the best interest of the City of Norman, Oklahoma, to execute that certain Project Agreement for Federal-aid Project Number STPG-114B(302)AG, State Job Number 29010(04), 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 \_\_\_\_\_, \_\_\_\_\_.

CITY OF NORMAN

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form and legality this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
City Attorney