

**RIGHT-OF-WAY, PUBLIC UTILITY
AND ENCROACHMENT AGREEMENT**

This Agreement, entered into between the City of Norman, Cleveland County, Oklahoma, hereinafter the City and the Department of Transportation of the State of Oklahoma, hereinafter the Department, in connection with the location and improvement of a portion of the State Highway System within the corporate limits of the City, now designated as SH-9 under plans and specifications for Federal / State Aid Project No. J2-0266(011), State Job No. 20266(11) Construction, (12) RW, (13) Utilities.

WITNESSETH

WHEREAS, it is mutually agreed between the parties that certain improvements should be made to the highway now as follows:

That the Department proposes construction of GRADE,DRAINING,BRIDGE & SURFACE. SH-9: FROM 72ND AVE EAST, EAST TO 108TH AVE EAST IN NORMAN (INCLUDES BRIDGE OVER UNNAMED CREEK)

WHEREAS, legislative authorization and the rules, regulations, and policies of the Department provide the basis of cooperation between the parties to effect such highway improvements.

NOW, THEREFORE, the parties hereto agree as follows:

The City agrees:

1. To the location of said highway, acknowledges receipt of and adopts the plans for said project as the official GRADE,DRAINING,BRIDGE plans of the City for its streets, boulevards, or arterial highway included therein.
2. That prior to the advertising of the project for bids (as to that part of the project lying within the present corporate limits) it will:
 - (a) Grant to the Department and its contractors, the right-of-entry to and the use of all existing streets, alleys, and other City owned property when required, and other rights-of-way shown on said plans. Further, City shall not permit the vacation of any such street, alley or other rights-of-way within the limits of the project without the prior written approval of Chief, Right-of-Way & Utilities Division, Department of Transportation, State of Oklahoma.

- (b) Remove at its own expense, or cause the removal of, all encroachments on the 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. Said removal shall be accomplished immediately on execution of this agreement and shall include necessary legal action where required.
- (c) Prohibit parking on that portion of the project within the corporate limits of the City.
- (d) 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 Regulations for Oklahoma Highways" Rev. 5/96, in compliance with current Oklahoma Highway Commission Policy, 69 O.S. 2011 § 1210.
- (e) 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.

3. That City will:

- (a) Determine and locate, with the Department's approval, a detour route over existing City streets, if a re-routing of traffic or a detour is necessary during the period of construction.
- (b) Be responsible, during or subsequent to construction, for all costs, for the operation and any maintenance necessary to the approved detour route over existing City streets, or any other street as a result of additional traffic.
- (c) Be responsible for all costs for repairs or maintenance to any City street, during or subsequent to construction, which results from additional traffic where construction is performed under traffic.

- (d) To the extent permitted by the ***Oklahoma Governmental Tort Claims Act***, Title 51 Oklahoma Statutes, 2011, § 151 *et seq.* and by Oklahoma Constitution Article 10, § 15, § 26 and as otherwise permitted by law, the City shall indemnify and save harmless the Department, its officers and employees, and shall protect and defend at its own expense all claims, demands, or suits whether in law or equity brought against the City or the Department arising from the City 's execution, performance, or failure to perform, a provisions of this agreement or alleged negligence in the location, design, construction, operation, or maintenance of a portion of the City Street System within the corporate limits of the City. Provided, nothing herein shall require the City to reimburse the Department for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Department. When any alleged act, omission, negligence, or misconduct may be subject to the limitations, exemptions, or defenses which may be raised under the Oklahoma Governmental Tort Claims Act, 51 O.S. 2011, § 151 *et seq.*, all such limitations, exemptions, and defenses shall be available to and maybe asserted by City. No liability shall attach to the Department except as expressly provided herein. Said indemnifications shall include all causes of action arising from contract, tort, negligence, condemnation or inverse condemnation.
- (e) 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 City agrees and stipulates as stated in the ODEQ-s *General Permit OKR10*, dated September 13, 2002, or latest revision to secure a storm water permit with the ODEQ, for utility relocations, when required. It is agreed that the storm water management plan for the project previously described in the document includes the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the storm water pollution prevention plan and the appropriate location map contained in the utility relocation plans.

4. That subsequent to the construction of said project, City will:

- (a) 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, including all necessary legal action when required.

- (b) Erect, maintain, and operate traffic control signals, including speed limit and traffic control signs, only in accordance with 47 O.S. 2011, § 15-104, 15-105 and 15-106, and subject to the approval, direction and control of the Department.
- (c) Regulate and control traffic on said project, including, but not limited to, the speed of vehicles, parking, stopping and turns, in accordance with 47 O.S. 2011, § 15-104, *et. seq.* and to make no changes in the provisions thereof without the approval of the Department.
- (d) Maintain all that part of said project within the corporate limits of the Underwriter 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. 2011, § 901 and all other applicable law.

The City shall also maintain any public road on Department owned right-of-way not connected to the highway nor allowing access to the highway. All maintenance shall be in accordance with 69 O.S. 2011, § 901 and all other applicable law.

- 5. If any existing, future or proposed local statute, ordinance, court order, rule policy, or other directive, including but not limited to, those that relate to right-of-way acquisition, encroachment removal, acquisition or relocation of outdoor advertising signs or structures or storm water drainage facilities, that are more restrictive than state or federal regulations, including all applicable Federal and State laws regarding the erecting, maintaining, and relocation of outdoor advertising signs or any other locally proposed changes, including, but not limited to, plats or re-plats, that results in any increased costs for right-of-way acquisitions, removal of encroachments, or the relocation, erecting, or maintaining of outdoor advertising signs or structures or storm water drainage facilities, City shall be solely responsible for all such related costs as the same are determined at the sole discretion of the Department, when such increased costs, including but not limited to relocation, acquisition, or litigation costs, are associated with any existing, future or proposed local statute, ordinance, court order, rule, policy, or other directive or change.
- 6. That all covenants of this Agreement shall apply to any area hereinafter annexed to the City which lies within the limits of this project.
- 7. That City will, by resolution, duly authorize the execution of this Agreement by the proper officials, and attach copies of such resolution to this Agreement.

8. That the participation in the necessary adjustments of utilities between the undersigned parties shall be as follows:
 - (a) The Department shall coordinate all the necessary utility adjustments with the owner(s) having utility facilities within the project limits.
 - (b) The City and the Department shall equally share, and each shall be financially responsible for one-half, the total cost of adjustments of any and all utility facilities presently located on and in privately owned right-of-way necessary to accommodate the construction of said project, whether such utilities are publicly or privately owned, including all pipelines, water lines, telephone lines, fiber optic cables, power lines, sewer lines, fire hydrants, light poles, and other such service installations. In the event the Department secures federal financial participation in the cost of these utility adjustments, the City shall not participate in the cost of adjusting City-owned utility facilities on private right-of-way. The local share of such costs shall be borne solely by the Department.
 - (c) Any and all monetary expenditures necessary to accomplish the adjustments of utility facilities presently located on and in public right-of-way shall be borne entirely by the owner(s) of the affected utilities except those public water and sanitary sewer systems specifically exempt in 69 O.S. 2011, § 1403(f). The City shall protect and indemnify the State from any expenses and liabilities resulting from these utility adjustments.

It is further agreed and understood between the parties that the City will pay to the Department the City's share of the actual utility adjustment costs of utility facilities relocated from private right-of-way promptly upon receipt of the Department's statement as the amounts become known.

9. The Department understands and acknowledges that the City is a municipal corporation and a charter City created and existing under the Constitution and Laws of the State of Oklahoma. The Department further acknowledges and understands that the obligations, duties and liabilities under this Agreement, including but not necessarily limited to all covenants to pay reimbursement or make payment from City funds, to provide City funds to acquire properties, to provide City funds to maintain and operate facilities, improvements, or rights of way, to annually provide City funds for maintenance, personnel and/or equipment, and/or to provide City funds for inspection are subject to annual appropriation of the City Council of the City and the availability of funds for such purpose.

IN CONSIDERATION of the grants and covenants by the City herein contained and the faithful performance thereof by the City, the Department agrees to construct said project in accordance with said plans and specifications; provided that the right to make such changes in the plans and specifications as are necessary for the proper construction of said project is reserved to the Department.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the City on the _____ day of _____, 20____, and the State on the _____ day of _____, 20_____.

ATTEST: (SEAL) CITY OF NORMAN

CITY CLERK

MAYOR

REVIEWED AND APPROVED AS TO
FORM AND LEGALITY

STATE OF OKLAHOMA
DEPARTMENT OF
TRANSPORTATION

CHIEF, LEGAL DIVISION (ODOT)

DIRECTOR

RESOLUTION

WHEREAS, it appearing reasonable and necessary for the City of Norman, Cleveland County, OKLAHOMA, to execute a Right-of-Way, Public Utility and Encroachment Agreement in connection with the construction of a public project known as Project No. J2-0266(011), Job No. 20266(11)Construction, (12)RW, (13)Utilities, in accordance with the terms and tenor of 69 O.S. 2011 §§ 1205, 1206, 1401, and 1403.

NOW, THEREFORE, BE IT RESOLVED by the City of Norman, Oklahoma, sitting in regular session that such contract be entered into and that a copy of same be hereto attached and made a part hereof by reference, all as provided by law.

ATTEST:

CITY CLERK

MAYOR