

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION
AND
THE CITY/TOWN OF CLINTON, OKLAHOMA**

THIS Agreement made the day and year last written below, by and between the Oklahoma Department of Transportation (hereinafter called the "DEPARTMENT") and the City/Town of Clinton, Oklahoma, (hereinafter called the "CITY/TOWN"), for the following intents and purposes:

WITNESSETH

WHEREAS, the DEPARTMENT is charged under the laws of the State of Oklahoma with the construction and maintenance of highways which are designated as a part of the State Highway System; and

WHEREAS, the DEPARTMENT, pursuant to Title 69 Oklahoma Statutes § 901, must pay for the maintenance of streets within cities and towns which such streets are the continuation of State or Federal highway; and

WHEREAS, reduced manning levels within the DEPARTMENT has caused a marked reduction in the availability of DEPARTMENT employees to perform maintenance on state highways; and

WHEREAS, the DEPARTMENT is authorized under the provisions of Title 69, Oklahoma Statutes § 1502 and Title 74, Oklahoma Statutes § 85.12 to contract for necessary services; and

WHEREAS, the CITY/TOWN has employees who have training and experience in maintenance of roadway surfaces; and

WHEREAS, the DEPARTMENT and the CITY/TOWN have agreed on terms under which CITY/TOWN employees will provide roadway maintenance on municipal streets which are continuations of State or Federal highways and the DEPARTMENT will reimburse the CITY/TOWN for the reasonable costs of such services and materials used in the performance of such maintenance.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the DEPARTMENT and the CITY/TOWN do hereby mutually promise and agree as follows:

SECTION 1 Purpose of the Agreement

The DEPARTMENT and the CITY/TOWN hereby agree that the CITY/TOWN will perform

all routine maintenance of State or Federal highways within the corporate limits of such CITY/TOWN from curb line to curb line or, where no curb exists, from shoulder line to shoulder line when such State or Federal highways are continued as CITY/TOWN streets within the corporate limits of such CITY/TOWN.

SECTION 2 Scope of Services

The CITY/TOWN is to perform surface repair on all State or Federal highways within the corporate limits of such CITY/TOWN such as, but not limited to, concrete and asphalt patching, crack sealing and such other routine repairs as may be approved by the DEPARTMENT and as are within the capabilities of such CITY/TOWN when such repairs are necessary to maintain the appearance and serviceability of such highways, to prolong the interval between major repairs and to maximize the overall service life.

SECTION 3 Time for Performance

Unless terminated as provided in Section 7, the roadway maintenance to be provided by the CITY/TOWN shall be performed from time to time and as needed from the date of execution of this Agreement by the DEPARTMENT's Deputy Director/Chief Engineer until the end of Fiscal Year 2010 but may be extended by a Supplemental Agreement for additional fiscal years by mutual agreement of the parties hereto.

SECTION 4 Compensation

The DEPARTMENT will compensate the CITY/TOWN for performance of roadway maintenance for actual costs for labor, to include the actual hourly pay rates plus additives of CITY/TOWN employees engaged in maintenance of streets subject to this Agreement during the time such employees are actually providing maintenance for such streets. The CITY/TOWN will be compensated for machinery or special equipment (other than small tools) used in performance of roadway maintenance at a maximum rate determined from the most current edition of Rental Rate Blue Book for Construction Equipment as published by Equipment Watch for the type and year of the equipment actually used by the CITY/TOWN for maintenance of streets subject to this Agreement during the time such equipment is actually in use performing maintenance on streets subject to this Agreement in accordance with the following formula:

Hourly rate = $\frac{\text{Monthly Rate} \times \text{Regional Adjustment} \times \text{Age Adjustment} + \text{Operating Cost}}{176}$

176

The CITY/TOWN will be compensated at cost for materials actually used in such roadway maintenance when such cost can be documented by supply invoices. Payment will be made monthly, in arrears, within forty-five (45) days of receipt of itemized invoice detailing costs for approved roadway maintenance. This Agreement is entered into for a total amount not to exceed Fifty Thousand Dollars (\$50,000.00).

SECTION 5 Travel

No reimbursable travel is contemplated under the terms of this Agreement.

SECTION 6 Dispute Resolution

Any dispute concerning a question of fact in connection with the work not disposed of by the Agreement between the parties hereto shall be referred to the DEPARTMENT's Director or his duly authorized representative for determination, whose decision in this matter shall be final and conclusive as the parties to this Agreement.

SECTION 7 Termination

This Agreement may be terminated upon thirty (30) days written notice by either the DEPARTMENT or the CITY/TOWN without fault. In the event of such termination the CITY/TOWN shall be entitled to compensation for the actual costs of labor, equipment, and material such are defined in Section 4 which may be used or expended for roadway maintenance services rendered prior to the date of termination.

SECTION 8 Hold Harmless Clause

The DEPARTMENT and the CITY/TOWN hereby mutually agree to indemnify and save harmless each and the other from any and all claims, suits in law or in equity, of any nature whatsoever, praying for any damages or otherwise arising from any alleged negligent act or omission of any of their respective employees or agents which may occur during the prosecution or the performance of this Agreement.

SECTION 9 Insurance

It is understood by the DEPARTMENT that the CITY/TOWN is self-insured and subject to the Governmental Tort Claims Act (51 O.S., § 151, et seq.) and will therefore, subject to any defenses, exemptions or limitations which may be available to the CITY/TOWN, provide workers' compensation, public liability and property damage protection for the CITY/TOWN and its employees and for the actions or omissions of those employees in accordance with the ordinances, rules and procedures of the CITY/TOWN as may be approved by its mayor and governing body.

SECTION 10 Non-Compensable Maintenance

The DEPARTMENT shall not compensate the CITY/TOWN for costs incurred in mowing the right-of-way or for striping for parking and miscellaneous markings, nor shall the DEPARTMENT pay for any maintenance on drainage systems and facilities, curbs, sidewalks or driveways, for any damage caused by drainage systems or utilities or for any maintenance performed outside of the curb of shoulder line on any roadway without curbs on any State or Federal highway which is continued as a municipal street within the CITY/TOWN.

SECTION 11 Major Repairs

The DEPARTMENT will perform major reconstruction or repair such as milling and overlay/resurfacing, widening, reconstructing, realignment and bridge structure repair on State and Federal highways continued as municipal streets within the CITY/TOWN.

SECTION 12 Reserved Maintenance

The DEPARTMENT will maintain all permanent signing adjacent to, and roadway striping on, the driving surface of municipal streets which are continuations of State or Federal highways within the CITY/TOWN.

SECTION 13 Departmental Authorization and Inspection

The CITY/TOWN must secure written authorization from the DEPARTMENT for all roadway maintenance prior to commencement of any maintenance for which reimbursement will be requested by the CITY/TOWN in accordance with terms of this Agreement. In emergency situations the CITY/TOWN may effect temporary or stabilizing repairs upon telephone authorization. Minor routine repairs such as small pot hole patching may be performed throughout this Agreement period upon approval by DEPARTMENT of a CITY/TOWN maintenance program which includes methods and materials to be used for such repairs. The CITY/TOWN must notify the DEPARTMENT within forty-eight (48) hours of completion of any approved roadway maintenance activity in order that the department may inspect and accept the completed work prior to final reimbursement. Any work determined by the DEPARTMENT not to be in conformance with the DEPARTMENT standards of quality and workmanship will be corrected or removed and replaced at CITY/TOWN expense as directed by the DEPARTMENT field personnel.

SECTION 14 Traffic Control During Maintenance

The CITY/TOWN will provide appropriate temporary signage, barricades and channeling devices, markings, light devices and traffic control through work areas as are described and required by the Manual on Uniform Traffic Control Devices for maintenance and construction zones.

SECTION 15 Utilities

Roadway restoration necessitated by installation or repair of underground utilities is not maintenance within the contemplation of this Agreement and is not compensable. Utility permits must be obtained from DEPARTMENT for all utility associated work performed within the right-of-way limits before such work may commence.

SECTION 16 Authorization to Execute Agreement

The CITY/TOWN agrees that it will, by resolution of its governing body, duly authorizes the execution of this Agreement by proper officials, and will attach copies of such resolution to this Agreement.

SECTION 17 Prior Understandings

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. This Agreement is entered into for a total amount not to exceed Fifty Thousand Dollars (\$50,000.00).

SECTION 18 Amendments of Modification of Agreement

No changes, revisions, amendments or alterations in the manner, scope, or type of work or compensation to be paid by 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 19 Records

The CITY/TOWN is to maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and to make such materials available at its respective offices at all reasonable times, during this Agreement period and for three (3) years from the date of final payment under this Agreement, for inspection by the DEPARTMENT and the State Auditor and Inspector, and copies thereof shall be furnished to the DEPARTMENT, if requested.

SECTION 20 Governing Law and Regulations

This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma and the applicable rules, regulations, policies, and procedures of the Oklahoma Transportation Commission.

SECTION 21 Notices

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 the Agreement shall be in writing and shall be deemed to have been properly given or sent:

(a) if intended for the DEPARTMENT, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to State at:

Oklahoma Department of Transportation
PO Box 1449
Clinton, OK 73601

(b) if intended for the CITY/TOWN, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid addressed to the CITY/TOWN at:

Grayson Bottom, City Manager
City of Clinton
PO Box 1177
Clinton, OK 73601

SECTION 22 Civil Rights Act of 1964

The CITY/TOWN 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, Part 21 - "Nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act 1964".

SECTION 23 Headings

Article headings used in this Agreement are inserted for convenience in reference only and shall not be deemed a part of this Agreement for any purpose.

SECTION 24 Binding Effect

This Agreement shall be binding upon and insure to the benefit of the DEPARTMENT and the CITY/TOWN and shall be binding upon their successors and assigns subject to the limitations of Oklahoma law.

SECTION 25 Severability

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 26 Effective Date

This Agreement shall become effective on July 1, 2009.

IN WITNESS THEREOF, _____
of the CITY/TOWN of _____, has set his hand and seal this _____ day of
_____, 2009, and John Fuller, Deputy Director/Chief Engineer, has set his hand and
seal this _____ day of _____, 2009.

CITY/TOWN OF _____

CITY/TOWN Official

ATTEST:

Approved as to form and legality:

CITY/TOWN Clerk

CITY/TOWN Attorney

(SEAL)

OKLAHOMA DEPARTMENT OF TRANSPORTATION

RECOMMENDED APPROVAL:

Brent Almquist, Division Five Engineer

Kevin Bloss, State Maintenance Engineer

Gary Evans, Asst. Chief Engineer/Dir. - Operations

Approved as to form and legality:

Approved:

General Counsel

John Fuller, Deputy Director/Chief Engineer