

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

This Agreement, entered into by and between the City of Clinton, Custer County, Oklahoma, hereinafter the City, and the Department of Transportation of the State of Oklahoma, hereinafter the Department,

**WITNESSETH**

WHEREAS, the Department proposes to construct certain highway improvements on an Interstate Route in the City of Clinton, Oklahoma, as follows:

That the Department proposes construction of I-40B Over the Washita River, 0.5 miles east of the US-183 Jct. in Clinton according to the plans for Federal/ State Aid Project No. J3-0331(004), State Job No. 30331(04) Construction, (06) Utilities.

WHEREAS, it is necessary that certain utilities and/or utility facilities will require adjustment(s) to accommodate the construction and future maintenance of the above described interstate highway improvement project, and

WHEREAS, Federal funds have been made available by the Federal Highway Administration, through the Department, and will participate in and pay an amount not to exceed 80% of the actual, reasonable, and necessary utility adjustment costs, and

WHEREAS, legislative authorization and the rules, regulations, policies and procedures of the Department provide the basis of cooperation between the parties regarding the financial responsibility and cost sharing of all the actual and reasonable necessary utility adjustment costs not borne by the Federal Highway Administration (estimated to be a minimum of 20% of the total utility adjustment costs).

NOW, THEREFORE, the parties hereto agree as follows:

The City agrees:

1. To the location of said highway improvement project and acknowledges receipt of and adopts the construction plans for said project as the official Bridge & Approaches plans of the City for all streets, boulevards or arterial highways included therein. Further, and in addition to the provisions contained elsewhere herein, City hereby grants to the Department access to and the use of all rights-of-way belonging to or controlled by the city and Further, City shall not permit the vacation of any such street, alley or other rights-of-way without the prior written approval of Chief, Right of Way & Utilities Division, Department of Transportation, State of Oklahoma.

2. To reimburse and promptly pay to the Department when the actual amounts become known, the balance of the total costs expended for the necessary utility adjustments not paid with Federal funds on and for all utility adjustments, less and except present City owned utilities and utility facilities. The City's financial obligation shall be no less than 20% of these total costs.
3. To the extent permitted by the **Oklahoma Governmental Tort Claims Act**, Title 51 Oklahoma Statutes, 2011§ 151 *et seq.* and by the Oklahoma Constitution Article 10, § 15, § 26 and as otherwise permitted by law, the City shall indemnify and save harmless the Department, it's 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, any 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 may be asserted by the City. No liability shall attach to the Department except as expressly provided herein. Said indemnification shall include all causes of action arising from contract, tort, negligence, condemnation or inverse condemnation.
4. 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.
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 change, 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.

The Department agrees:

1. To construct said project in accordance with said plans and specifications; provided the right to make such changes in the plans and specifications as are necessary for the proper construction and maintenance of said project is reserved by the Department.
2. To pay the balance of the total costs expended for the necessary adjustments of City owned utilities and utility facilities not paid with Federal funds. The State's financial obligation shall be no less than 20% of these total costs.
3. 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 WITNESS WHEREOF, we have hereunto set our hands and seals, the City on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the Department on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF CLINTON

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

(SEAL)

APPROVED AS TO FORM AND  
LEGALITY

STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
CHIEF, LEGAL DIVISION (ODOT)

\_\_\_\_\_  
DIRECTOR