



## Agenda Commentary

**Item Title/ Subject:** Shared Obligation for Relocation of Utilities on the I40B Washita River Bridge Construction Project

**Staff Source:** Debra Blanchard, City Treasurer

**History/Background Information:** The Oklahoma Department of Transportation and City of Clinton entered into an agreement on May 7<sup>th</sup>, 2019 called the "Right-of-Way, Public Utility and Encroachment Agreement" for the I40B Over the Washita River Bridge Project. The Bridge Project will be approximately a \$10.5 million investment to our community by ODOT and FHWA. This project included relocation of City of Clinton Waterlines (we were reimbursed 100% for our Waterline Relocation) and all other Utilities that needed to be relocated. The agreement states "The City's financial obligation shall be no less than 20% of these total costs." The City, ODOT, and Federal Highway Administration share these relocation costs based on this agreement. These cost shares are also mandated by FHWA and State Statute, per information from the Utilities Coordinator for the Right-of-Way and Utilities Division of ODOT.

**Item/Subject Summary:** In reviewing documents in the administrative offices this week, the invoice and supporting documents from ODOT were located and I verified that this has not been paid/remitted to the State. I have spoken with Brent Almquist and Jason Hulin for explanation on the project and invoices. The amount we have been billed is 20% of the actual relocation costs of multiple gas lines and phone/fiber optic lines in City of Clinton.

**Price/Cost:** \$80,340.35

**Recommendation:** I recommend approval and payment of the City of Clinton Underwriter's Obligation in the above mentioned project, as agreed to per the agreement executed on May 7<sup>th</sup>, 2019. I am requesting City Council Approval due to the size of the payment, which was not indicated in the ODOT agreement approval.



**OKLAHOMA DEPARTMENT OF TRANSPORTATION**  
200 N. E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105-3204

October 30, 2019

ACCOUNT NO.  
R20-03

THE HONORABLE DAVID BERRONG, MAYOR  
CITY OF CLINTON  
PO BOX 1177  
CLINTON, OK 73601



Dear Mayor:

Re: Job Piece 30331(06), NHPP-220N(044)UT, Custer County

CONSTRUCTION OF I-40B OVER THE WASHITA RIVER, 0.5 MILES EAST OF THE US-183 JCT.  
IN CLINTON

This is to advise you that the City of Clinton underwriter's obligation in the above project for \$80,340.35 is past due.

Your Agreement with the Department dated 05/16/2019 sets out your obligation on this project. We appreciate the cooperation you have given us in the past and may we request that you please give this billing your prompt attention.

If you have any questions in regard to this matter, please contact the Business Office at (405) 521-2645 or via email at [Euselton@odot.org](mailto:Euselton@odot.org).

Sincerely

Ellie Uselton  
Accountant II  
Business Office  
Legal and Business Services Division  
Oklahoma Department of Transportation

*"The mission of the Oklahoma Department of Transportation is to provide a safe, economical, and effective transportation network for the people, commerce and communities of Oklahoma."*

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION  
LEGAL & BUSINESS SERVICES DIVISION

RETURN PAYMENT TO:  
Comptrollers Division

UNDERWRITER BILLING  
ACCOUNT # R20-03  
INVOICE # LA-242B

TO: THE HONORABLE DAVID BERRONG, MAYOR  
CITY OF CLINTON  
PO BOX 1177  
CLINTON, OK 73601

INVOICE DATE: June 21, 2019  
AGREEMENT DATE: 05/16/2019  
UNDERWRITER: CITY OF CLINTON  
JOB PIECE #: 30331(06)  
PROJECT #: NHPP-220N(044)UT  
COUNTY: CUSTER  
LOCATION: 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)  
TYPE OF BILLING: UTILITIES

TOTAL BILLED TO DATE	PAID TO DATE	CURRENT CHARGES	CURRENT PAYMENTS	TOTAL AMOUNT DUE
\$80,340.35	\$0.00	\$34,324.47	\$0.00	\$80,340.35

REMARKS:

This invoice is submitted in accordance with our Agreement and represents your Current billing for Utilities costs on the above project. Attached is a computer printout showing project costs and the amount of this billing.

Billing Authorized by:



Ellie Uselton  
Business Office  
Legal & Business Services Division  
(405) 522-0803  
[Euselton@odot.org](mailto:Euselton@odot.org)

cc: Accounts Receivable  
Cashier  
Records Center  
Business Office Accountant

**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,

**W I T N E S S E T H**

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, 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, 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.

STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION  
*Anthony A. Nagels*  
for DIRECTOR

APPROVED AS TO FORM AND  
LEGALITY  
*[Signature]*  
CHIEF, LEGAL DIVISION (ODOT)

(SEAL)

MAYOR  
*[Signature]*

CITY CLERK  
*[Signature]*

ATTEST:

CITY OF CLINTON

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the City on  
the 7th day of May, 2019, and the  
Department on the 16th day of May, 2019.

RESOLUTION

WHEREAS, it appearing reasonable and necessary for the CITY OF CLINTON, OKLAHOMA, to execute an Agreement in connection with the construction of a public project known as Project No. J3-0031(004), State Job No. 30331 (04) Construction, (06 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 CLINTON, OKLAHOMA, sitting in regular session that such contract be entered 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

(SEAL)