RESOLUTION NO 2015-05

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OTTAWA COUNTY, OKLAHOMA:

THAT, WHEREAS it is in the best interest of **OTTAWA** County, to execute that certain Project Agreement for CO BR OVER HICKORY CREEK ON EW 23 APPX .4MI N AND 1.4MI E OF SH125/US59 JCTXTOWN BEAMS Project Number J2-9894(04), State Job Piece Number jp 29894(04), by and between **OTTAWA** County and the Oklahoma Department of Transportation;

NOW, THEREFORE, it is hereby resolved that the Board of County Commissioners of **OTTAWA** County is hereby authorized and directed to execute the above described agreement on behalf of **OTTAWA** County, and duly signed by the Board of County Commissioners of **OTTAWA** County this 9th day of February, 2015.

APPROVED AS TO FORM AND LEGALITY:

District Attorney 2/17/15 Date

ATTEST:

REBA G. SILL By: Robyn Mitchell

County Clerk
(Seal)

OTTAWA COUNTY 1907

Board of County Commissioners
OTTAWA COUNTY:

Gary Wynn
Chairman Date

John Clarke
Member Date

Russell Earls
Member Date

STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION
PROJECT MAINTENANCE, FINANCING, AND RIGHT-OF-WAY AGREEMENT

CO BR OVER HICKORY CREEK ON EW 23 APPX .4MI N AND 1.4MI E OF SH125/US59 JCTXTOWN BEAMS
Project No.: J2-9894(04)

State Job No.: 29894(04)

This agreement, made the day and year last written below, by and between the Board of County Commissioners in and for **OTTAWA** County, hereinafter referred to as the County, and the Department of Transportation of the State of Oklahoma, hereinafter referred to as the Department, 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 the administration of the and County Improvements for Roads and Bridges (CIRB) Program to construct or reconstruct roads and bridges on the County Transportation System that are of the highest priority; and,

WHEREAS, the County proposes to make certain improvements to include the modification of CO BR OVER HICKORY CREEK ON EW 23 APPX .4MI N AND 1.4MI E OF SH125/US59 JCTXTOWN BEAMS in order to serve the people of the State of Oklahoma and the citizens and residents of **OTTAWA** County, and

WHEREAS, County Improvements for Roads and Bridges funding has been made available for the construction of the above referenced project pursuant to Title 69, Section 507 of the Oklahoma State Statutes; and

WHEREAS, it is expressly understood by the County that the Consulting Engineer or Circuit Engineering District is solely responsible for the quality and accuracy of all detailed plans and estimates prepared for the project.

NOW, THEREFORE: the Department and the County, in consideration of the mutual covenants and stipulations as set forth herein, do mutually promise and agree as follows:

SECTION 1: PROJECT AGREEMENT

The Department will request approval from the Transportation Commission for participation in the project that consists of the modification of CO BR OVER HICKORY CREEK ON EW 23 APPX .4MI N AND 1.4MI E OF SH125/US59 JCTXTOWN BEAMS in the County of **OTTAWA**.

1.1 If applicable, the Department will recommend approval of the project by the Federal Highway Administration.

1.2 The County shall by resolution, duly authorize the execution of this agreement by proper officials and attach copies of such resolution to this agreement.

1.3 The County agrees to comply with Title VI of the Civil Rights Act of 1964, 78 Stat. § 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".

1.4 The DEPARTMENT and COUNTY mutually recognize that each party is a governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. § 151 et seq.). The DEPARTMENT and COUNTY 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 the 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.

1.5 The County understands that should it fail to fulfill its responsibilities under this Agreement, such a failure will disqualify the County from future Federal-aid or CIRB funding participation on any proposed project. Federal-aid and/or CIRB funds are to be withheld until such a time as an engineering staff, satisfactory to the Department has been properly established and functioning, the deficiencies in regulations have been corrected or the improvements to be constructed under this Agreement are brought to a satisfactory condition of maintenance.

SECTION 2: ENGINEERING RESPONSIBILITIES

2.1 The County shall provide professional engineering services for the development of the Plans, Specifications and Estimates (PS&E) for this project. Design engineering for this project will be performed under the supervision of the County by their Circuit Engineering District, or a consulting firm, if the County deems it necessary. County warrants to the Department that they will review the plans and will certify that the plans are acceptable to the County and are in full compliance with current standards and specifications.

2.2 To the extent permitted by law, all data prepared under this agreement shall be made available to the Department without restriction or limitation on their further use, with exception of any documents or information that would be considered attorney/client privileged by the County.

2.3 The Department will conduct the environmental studies and prepare the National Environmental Protection Act documents as required for federally funded projects. The County will be responsible for environmental studies as required by Statute or Treaty for non-federally funded projects.

2.4 The Department will forward the environmental documents to FHWA for approval if applicable.

SECTION 3: LAND ACQUISITION AND UTILITY RELOCATION

3.1 The County warrants to the Department that, they have or will acquire all land, property, or rights-of-way needed for complete implementation of said project, free and clear of all obstructions and encumbrances and in full accordance with the Department's guidelines for Right-of-Way Acquisition on Federal-Aid Projects, the Uniform Relocation Act, the National Environmental Protection Act and all other applicable local, state and federal regulations.

3.2 The County warrants to the Department that it is knowledgeable of and will comply with the provisions of 42 U.S.C.A., Section 4601-4655 and 23 U.S.C.A., Section 323 (as amended) and 49 C.F.R. Part 24 in the acquisition of all right-of-way and the relocation of any displacees.

3.3 The County shall remove, at its own expense, or cause the removal of, all encroachments on existing streets as shown on said plans, including all buildings, porches, fences, gasoline pumps, islands, and tanks, and any other such private installations and shall further remove or remediate any existing environmental contamination of soil and water from any source, known or unknown.

3.4 If the acquisition of Right of way for this project causes the displacement of any person, business or non-profit organization, the County warrants it will provide and be responsible for the Relocation Assistance Program and all costs associated with the relocation assistance program. The Department, upon request, will provide a list of service providers who have been prequalified to administer the Relocation Assistance Program. The County agrees to employ a service provider from the prequalified list provided by the Department. Prior to any relocation assistance payments to the County, all files with parcels requiring relocation assistance shall be submitted to the Department for audit and compliance review. The County shall notify the Department within seven (7) days of the date of an offer to acquire being provided to a property owner(s) on any parcel which will require relocation assistance. Written notifications regarding service providers, in-house personnel, appeals, offers to acquire or other related correspondence shall be properly addressed and remitted as follows:

Oklahoma Department of Transportation
Right-of-Way and Utilities Division
Acquisition Branch
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105-3204

3.5 The County warrants that any procurement of property, goods or professional and personal services required for this project will be acquired by the County in compliance with the federal procurement Regulations at 49 C.F.R. § 18.36 and the Regulations for Administration of Engineering and Design Related Service Contracts at 23 C.F.R. Part 172, as well as provisions of State purchasing laws applicable to the County.

3.6 The County will certify to the Department prior to establishing a letting date that all existing utility facilities (if any) have been properly adjusted in full accordance with the Department's Right-of-Way and Utilities Division policies and procedures to accommodate the construction of said project; and will be solely responsible for payment of any and all contractor expenses, claims, suits and/or judgments directly resultant from any actual utility relocation delays.

3.7 The County shall have the authority pursuant to 69 O.S. 2001 § 1001 and 69 O.S. 2001 § 1004 to sell any lands, or interest therein, which were acquired for highway purposes as long as such sale is conducted in accordance with the above cited statutes.

3.8 The County agrees that if any property acquired utilizing CIRB or Federal funding is disposed of or is no longer used in the public interest the County shall reimburse the Department at the current fair market value.

SECTION 4: CONSTRUCTION FUNDING

4.1 The Department and the County agree that the project will be financed as described below:

FUNDING SOURCE =>			CIRB			
STATE JOB PIECE NO.	**DESCRIPTION**	**TOTAL *ESTIMATED* COST**	**SHARE (%)**	**AMOUNT**	**SHARE (%)**	**AMOUNT**
29894(05)	Design	$72,100	100	$72,100		
29894(06)	Right-of-Way -	$20,000	100	$20,000		
29894(07)	Utilities -	$75,000	100	$75,000		
29894(04)	Construction -	$530,000	100	$530,000		
Total		**$697,100**	**Total=>**	**$697,100**		

4.2 It is understood by the COUNTY and the Department that the funding participation stipulated herein may be altered due to bid prices, actual construction supervision costs and non-participating costs incurred during construction. The COUNTY will be responsible for payment of any estimated local funding prior to advertising the project for bid. Upon final acceptance of this project, the total project cost will be determined, and the final amount of local funds (if any) will be determined by the Department's Comptroller per the terms of this agreement. A refund will then be made by the Department to the COUNTY or additional funding will be requested. The COUNTY agrees to make arrangements for payment of any Department invoice within 45 days of receipt.

SECTION 5: CONSTRUCTION RESPONSIBILITIES

5.1 The County agrees to 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 County 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 also agreed that the storm water management plan for the project previously described in the document includes project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the site specific storm water pollution prevention plan and the appropriate location map contained in the utility relocation plans.

5.2 The County's responsibility for environmental cleanup will be a continuing responsibility to remediate any and all known and unknown environmental damage

throughout the duration of this contract with the Department in compliance with State and federal regulations.

5.3 The roadway improvements and all devices specified herein shall not be altered, removed, or cease to be operative without mutual written consent of the Department and the County.

5.4 Upon approval of this AGREEMENT and the plans, specifications, and estimates by the COUNTY, the Department, and the Federal Highway Administration (if applicable), the Department will advertise and let the contract for this project in the usual and customary legal manner. It is agreed that the projects herein contemplated are proposed to be financed as previously described, and that this agreement, all plans, specifications, estimate of costs, acceptance of work, payments, and procedure in general hereunder are subject in all things at all times to all local, state and Federal laws, regulations, orders, approvals as may be applicable hereto.

5.5 The Department shall provide a copy of the executed construction contract to the County, upon receipt of a written request.

5.6 The Department will notify the County of pre-bid dates, bid opening dates, and Transportation Commission award dates in writing.

5.7 The Department will appoint competent supervision and inspection of the construction work performed by the construction contractor and will provide such engineering, inspection and testing services as may be required to ensure that the construction of the project is accomplished in accordance with the approved Plans, Specifications and Estimates. The Department reserves the right to make such changes in said plans as may be necessary for the proper construction of said project.

5.8 The County agrees to provide such competent supervision as the County deems necessary during times that the work is in progress to insure the completion of the project to the County's satisfaction and the County's representatives and the Department's representatives will cooperate fully to the end of obtaining work strictly in accordance with the plans and specifications.

5.9 The County will make ample provisions annually for the proper maintenance of said project, including the provision of competent personnel and adequate equipment, specifically, to provide all required maintenance of the project during the critical period immediately following construction and to keep the facility in good and safe condition for the benefit of the traveling public.

5.10 The County warrants to the Department that it will periodically review the adequacy of the aforesaid project to insure the safety of the traveling public and should

the County determine that further modifications or improvements be required, the County shall take such actions as are necessary to make such modifications or improvement. When operation modifications are required which in the opinion of the Department exceed the capability of the County's staff, the County agrees to retain, at the sole expense of the County, competent personnel for the purpose of bringing the improvement up to the proper standard of operation.

5.11 The County warrants and agrees that upon completion of the aforesaid project, the County assumes any and all financial obligations for the operation, use, and maintenance of the aforesaid project.

SECTION 6: NON-DISCRIMINATION CLAUSE

6.1 During the performance of this Agreement, the County, for itself, its assignees and successors in interest, agrees as follows:

6.1.1. **Compliance with Regulations:**
The County shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

6.1.2. **Nondiscrimination:**
The County, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The County shall not participate either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in appendix B of the Regulations.

6.1.3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:**
In all solicitations, either by competitive bidding or negotiation, made by the County for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor or subcontractor or supplier shall be notified by the County of the County's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, national origin, disability/handicap, or income status.

6.1.4. **Information and Reports:**
The County shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a County is in the exclusive possession of another who fails or refuses to furnish this information, the County shall so certify to the State Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

6.1.5. **Sanctions for Noncompliance:**
In the event of the County's noncompliance with the nondiscrimination provisions of this contract, the State Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

a. Withholding of payments to the County under the contract until the County complies and/or
b. Cancellation, termination, or suspension of the contract in whole or in part.

6.1.6. **Incorporation of Provisions:**
The County's shall include the provisions of paragraphs 1 through 6 in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The County shall take such action with respect to any contract or subcontract or procurement as the State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a County becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the County may request the State Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the County may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 7: TERMINATION

7.1 This agreement may be terminated by any of the following conditions:

7.1.1 By mutual agreement and consent, in writing of both parties.

7.1.2 By the Department by written notice to the County as a consequence of failure by the County to perform the services set forth herein in a satisfactory manner.

7.1.3 By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

7.1.4 By the Department for reasons of its own and not subject to the mutual consent of the County upon five (5) days written notice to the County.

7.1.5 By satisfactory completion of all services and obligations described herein.

7.2 The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the Department and the County under this agreement. If the potential termination of this agreement is due to the failure of either the Department or the County to fulfill their obligation as set forth herein, the non-breaching party will notify the party alleged to be in breach that possible breach of agreement has occurred. The party alleged to be in breach should make a good faith effort to remedy that breach as outlined by non-breaching party within a period mutually agreed by each party.

SECTION 8: NOTICES

8.1 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:

8.1.1 If intended for the Department, by mailing first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid addressed to the Department at:

Oklahoma Department of Transportation
Local Government Division
Attn: Shannon Sheffert, PE
200 N.E. 21st Street
Oklahoma City, OK 73105-3204

8.1.2 If intended for the County, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to the County at:

OTTAWA COUNTY COMMISSIONER
Attn: Russell Earls
102 E. Central Suite 104
Miami, OK 74354

SECTION 9: GOVERNING LAW AND VENUE

9.1 Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance, or enforcement of this Contract shall be governed by the laws of the State of Oklahoma and the applicable rules, regulations, policies and procedures of the Oklahoma Transportation Commission. Venue for any action, claim, dispute or litigation, mediation or arbitration shall be in Oklahoma County, Oklahoma.

SECTION 10: DISPUTE RESOLUTION

10.1 The parties hereto have entered into this Agreement in the State of Oklahoma and the laws of the State of Oklahoma shall apply. The parties agree to bargain in good faith in direct negotiation to achieve resolutions of any dispute and, if such efforts are unsuccessful, to retain a neutral mediation service to mediate the dispute prior to the filing of any court action. Mediation shall be conducted in the Oklahoma City area and the costs of such mediation shall be borne equally by the parties. If mediation is not successful, venue for any action brought to enforce the terms of this Agreement shall be in Oklahoma County, State of Oklahoma. Each party shall bear any cost and attorney fees incurred by the party in such litigation.

SECTION 11: PRIOR UNDERSTANDINGS

11.1 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.

SECTION 12: AMENDMENTS OR MODIFICATIONS OF AGREEMENT

12.1 No changes, revisions, amendments or alterations in the manner, scope of type of work or compensation to be paid by the DEPARTMENT shall be effective unless reduced to writing and executed by the parties with the same formalities as are observed in the execution of this Agreement.

SECTION 13: RECORDS

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

SECTION 14: HEADINGS

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

SECTION 15: BINDING EFFECTS

15.1 This contract shall be binding upon and inure to the benefit of the ODOT and the County and shall be binding upon their successors and assigns subject to the limitations of Oklahoma law.

SECTION 16: SEVERABILITY

16.1 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 17: EFFECTIVE DATE

17.1 This agreement shall become effective on the date of execution by the Department's Director or his designee.

IN WITNESS WHEREOF, the Director of the Department of Transportation or his designee, pursuant to authority vested in him by the Transportation Commission, has hereunto subscribed his name as Director of the Department of Transportation, and the County has executed same pursuant to authority prescribed by law.

The County on the 9th day of February, 2015, and the Department on the 9th day of February, 2015.

APPROVED AS TO FORM AND LEGALITY:

District Attorney 2/17/15 Date

ATTEST:

REBA G. SILL
By: Robyn Mitchell

County Clerk
(Seal)

OTTAWA COUNTY 1907

Board of County Commissioners
OTTAWA COUNTY

John Clarke
District 1 Date

Gary Wyant
District 2 Date

Russell Earls
District 3 Date

REVIEWED AND APPROVED AS TO FORM AND LEGALITY:

ODOT General Counsel Date

RECOMMENDED:

Local Government Division Date

APPROVED BY:

Director of Capital Programs Date

STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION

Deputy Director Date