



## *Agenda Commentary*

**Item Title/ Subject:** Chapman Road Right-of-Way Agreement with ODOT

**Staff Source:** City Manager, Steve Hewitt

**Date:** Jan. 15<sup>th</sup>, 2013

**History/Background Information:**

Chapman Road is a project that we are working towards completion. ODOT has approved our plans and requires easement both temporary and permanent, prior to allowing us to begin construction.

**Subject Summary:**

ODOT needs the Right-of-Way, Public Utility and Encroachment Agreement completed approved by City Council. This details what the City needs to agree to and provide before the project can begin. This Standard document must be approved and completed. ODOT has provided me with the Temporary and Permanent ROW list. Once this agreement has been signed we can negotiate with land owners along Chapman Road.

**Recommendation:**

Once this agreement is approved, staff will move forward and bring back the easement agreements for your approval. At that point we submit all to ODOT. They will then expect all utilities involved to be relocated. After relocations, we can bid this project. This project may not begin until mid-summer.

**Price/Cost:** Negotiated with land owners.



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

January 4, 2013

Mr. Steve Hewitt – City Manager  
City of Clinton  
415 W. Gary Blvd. (City Hall)  
Clinton, OK 73601

**Re: Federal-Aid Project No. STP-120B(070)TC**  
**State Job Piece No. 19669(04)**  
**CHAPMAN AVENUE FROM 28TH ST TO NEPTUNE DRIVE**

**BASE BID : CHAPMAN RD - FROM RED WHEAT DRIVE TO NEPTUNE DRIVE**  
**FINAL PLANS ESTIMATE - \$1,376,940**

**ALTERNATE 1 : CHAPMAN RD - FROM 28TH STREET TO RED WHEAT DRIVE**  
**PRELIMINARY PLANS ESTIMATE - \$247,426**

**ALTERNATE 2: RED WHEAT DRIVE – FROM CHAPMAN RD TO BOULEVARD OF CHAMPIONS**  
**PRELIMINARY PLANS ESTIMATE - \$236,470**

We have reviewed federal funding levels currently available to be allocated to this project:

For City budgeting purposes, the TCSP funds and the STP funds referenced below should be considered as capped amounts. These funds have a 20% local matching fund requirement.

The exact City Match required to capture these federal funds is noted below @ \$281,822. Project costs over and above the total available funds should be considered a City responsibility.

TCSP Funding:	\$ 377,287
STP Formula Funds:	\$ 750,000
20% City Match:	\$ 281,822
Total Available Funds:	\$1,409,109

We have been discussing further the concept of Add Alternates with ODOT Staff as it relates to this particular project.

We now believe this project would be a good candidate for advertising the base bid plus both alternates, so long as there are sufficient resources for the estimated cost of at least the base bid.

The philosophy in this case is to ensure the utilization of all available federal funding, especially due to the expiration of unobligated TCSP funds at the end of the federal fiscal year.

Should the base bid come in significantly under the base bid estimate and we don't have the alternates bid, we risk leaving available federal funds unused.

We have made arrangements with the ODOT Comptroller to exempt the City from the pre-advertising upfront deposit requirement of the estimated amount of the alternates. The required City deposit will be based only on the City share of the estimated base bid plus 6% estimated inspection.

The base project plus both alternates will be bid if the City elects to do so.

After the bids are opened and bid costs are calculated, the City may choose whether or not to proceed with either of the 2 alternates. There will be no risk or obligation to the City to award any of the alternates -

We will prepare the project financing agreement to reflect the funding levels noted above. The plans may be finalized to show the alternates, subject to City concurrence.

We understand the City will be working to clear the RW over the next few months. As previously noted, TCSP funds are scheduled to expire at the end of September – Due to federal processing requirements, our goal is to have final Plans, Specifications & Estimates and Right-of-Way Certifications in place at least 60 days prior to the cutoff.

The Department is prepared to advertise the project for bid upon as soon as the Rights-of-Way are cleared and final plans are available.

If you need additional information, please contact this office at (405) 521-2737.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Scott".

Mark Scott  
Assistant Division Manager  
Local Government Division

Cc: Brent Almquist – Division 5 Engineer  
Shannon Sheffert – Local Government Division Engineer

Chapman Avenue Reconstruction from 28th Street to Neptune Drive, Clinton, OK

JP 19669(04)

List of Proposed Easement Acquisitions

Parcel	Description	Book	Page	Owner	Proposed Acquisition	Area (acres)
1	SW/4 Sec 22 West of RR			City of Clinton	Permanent Right of Way	0.743
2	part of S/2 Sec 22	1493	365	Hotelmacher, LLC	Permanent Right of Way	3.632
3	part of NE/4 Sec 27	321	190	G W and Cheryl Lowry	Permanent Right of Way	0.156
4	part of NE/4 Sec 27	321	190	G W and Cheryl Lowry	Temporary Construction Esmt	0.106
5	part of SE/4 Sec 22	1493	365	Hotelmacher, LLC	Temporary Construction Esmt	0.039
6	part of SE/4 Sec 22	1493	365	Hotelmacher, LLC	Temporary Construction Esmt	0.071
<b>[REDACTED]</b>						
8	part of SE/4 Sec 22	335	199	James Bray, Jr. Thomas and Penny	Temporary Construction Esmt	0.121
9	part of SE/4 Sec 22	1398	625	Hargus	Temporary Construction Esmt	0.009
10	part of NE/4 Sec 27	1079	179	Walter and Carolyn Schumacher	Temporary Construction Esmt	0.033

The names of the owners listed above were obtained in May 2011 from copies of existing deeds as part of the survey for this project.

A Certified Ownership Report from a licensed abstractor should be obtained for each Parcel before entering an acquisition agreement.

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

This Agreement, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Clinton, Custer County, Oklahoma, hereinafter called the City and the Department of Transportation of the State of Oklahoma, hereinafter called the Department,

Witnesseth:

That for and in consideration of the covenants and agreements hereinafter set forth, it is mutually agreed by and between the parties hereto as follows:

In connection with the location and improvement of a portion of the City Street System within the corporate limits of the City, now designated as Chapman Road from 28th Street to Neptune Road under plans and specifications for STP-120B(070)UR, Job No. 19669(04).

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 and drainage plans of the Underwriter for the streets, boulevards, or arterial highway 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 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. 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 all existing streets, alleys, and City owned property when required, and other rights-of-way shown on said plans.
- (b) Remove at its own expense, or cause the removal of, all encroachments on 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 Local Public Agency.
- (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 Regulation for Oklahoma Highways", Rev. 5/96, 69 O.S. (2001) § 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, Sections 151 *et seq.* and by Oklahoma Constitution Article 10, section 26 and as otherwise permitted by law, the City shall indemnify and save harmless the Department, its officers and employees, and shall process 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, and 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. § 151 *et seq.*, all such limitations, exemptions, and defenses shall be available to and may be asserted by City. No liability shall attach to the Department except as expressly provided herein.
  
- 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 OS 2001, Section 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 OS 2001, 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 City.
  - (e) The City 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. Prior written approval by the Chief, Right-of-Way & Utilities Division for the Department shall be required before any sale is made.
5. That all covenants of this Agreement shall apply to any area hereinafter annexed to the City which lies within the limits of this project.
  6. That it will, by resolution, duly authorize the execution of this Agreement by the proper officials, and attach copies of such resolution to this Agreement.
  7. To acquire all right-of-way, if any, be responsible for the total costs for removing and relocating outdoor advertising signs and for the relocation assistance payments to persons displaced by reason of the acquisition of right-of-way and be responsible for the removal or relocation of all utility lines on public or private rights-of-way to accommodate the construction of this project.
    - (a) Transmit copies of the instruments, including all deeds and easements, to the Department prior to the advertisement of bids for construction.

- (b) Comply with the provisions of 42 U.S.C.A. § 4601-4655 and 23 U.S.C.A. § 323 (as amended) and, further comply with 49 C.F.R. Part 24 in the acquisition of all necessary right-of-way and relocation of all displacees.
- (c) That as a condition to receiving any Federal Financial Assistance from the Department, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252.42 U.S.C. 2000d-35 seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination of federally-assisted Program of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964".

8. If the acquisition of right-of-way for this project causes the displacement of any person, business or non-profit organization, the City will provide and be responsible for the Relocation Assistance Program and for all costs associated with the relocation assistance payments. The Department, upon request, will supply a list of service providers who have been prequalified to administer the Relocation Assistance Program. The City agrees to employ a service provider from the Department's prequalified list or advise the Department in writing that their in-house personnel have the knowledge, skills, & abilities to effectively manage the Relocation Assistance Program. The City agrees to comply with all applicable rules, regulations, statues, policies and procedures of both the United States and the State of Oklahoma and specifically The Uniform and Relocation Assistance and Real Property Acquisition Act, 49 CFR 24. The City agrees to create & seat a Relocation Assistance Program Appeals Board pursuant to 49 CFR Sec. 24.10 or submit a written request to the Department requesting that the Department function in such capacity on behalf of the City. Before any relocation assistance payments are made by the City, all files with parcels requiring relocation assistance shall be submitted to the Department for audit & compliance review by the Department. The Department shall be notified in writing 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, ect. shall be addressed to Acquisition Branch, Right-of-Way & Utilities Division, Oklahoma Department of Transportation, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73105.

IN CONSIDERATION of the grants and covenants by the City herein contained and the faithful performance thereof by the City, the City agrees to construct said project in accordance with said plans and specifications; provided that the right to review and approve and 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:

CITY OF CLINTON

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

REVIEWED AND APPROVED AS TO  
FORM AND LEGALITY

STATE OF OKLAHOMA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Chief, Legal Division (ODOT)

\_\_\_\_\_  
Director