

OKLAHOMA DEPARTMENT OF TRANSPORTATION AGREEMENT FOR LANDSCAPING

This agreement is entered into this _____ day of _____, 20____, between the Department of Transportation of the State of Oklahoma, hereinafter known as the DEPARTMENT, and _____, of _____, Oklahoma, hereinafter known as the DEVELOPER:

WITNESSETH:

Whereas, the DEVELOPER requests permission to construct landscaping on the highway right-of-way located at:

and the Department is willing to allow such landscaping. Now therefore, the parties do mutually agree as follows; to-wit:

The DEPARTMENT agrees to permit the DEVELOPER to construct said landscaping on the site located above, in accordance with the plans and specifications hereto attached and made a part hereof and as further provided herein.

THE DEVELOPER HEREBY AGREES:

1. That the terms and conditions of this agreement are binding upon his successors, grantees and tenants, and he will advise those parties of their obligations.
2. That all expenses associated with the construction and maintenance of the landscaping on the highway right-of-way shall be borne by the DEVELOPER.
3. That all construction will be in accordance with the plans hereby attached to the agreement.
4. That all maintenance (to include mowing, trimming, litter pick-up, and care and watering of all plant materials) will be in accordance with the initial five-year plan attached hereto and made a part hereof. After the initial five-year maintenance period, the DEVELOPER will retain an additional responsibility for perpetual vegetation management as follows: A minimum of four times per year the DEVELOPER will control erosion and undesirable vegetation around the base of the items in the designated planting area approved in this agreement. The DEVELOPER will also, a minimum of once per year, prune the approved vegetation for esthetics and to allow DEVELOPER'S mowing equipment easy accessibility around the trees and shrubs approved by this agreement to prevent encroachment of such vegetation into the right-of-way outside of the designated planting areas. The DEVELOPER may perform such trimming more often at the DEVELOPER'S discretion. Vegetation maintenance and erosion control will be the responsibility of the DEVELOPER inside the designated planting areas. Vegetation maintenance and erosion control will be the responsibility of the DEPARTMENT outside the designated planting areas as required by applicable Transportation Commission Rules. If the DEVELOPER elects to remove the landscaping permitted by this agreement, the DEVELOPER will no longer be responsible for maintenance to the DEPARTMENT'S property once the Right-of-Way is restored to a condition acceptable to the DEPARTMENT.
5. That adjacent property owners have priority on proposed landscaping on right-of-way immediately adjacent to their property; if declined, said property owners must concur with proposed landscaping by other persons.
6. That ingress and egress of workers and equipment into the site during construction and upon completion will be accomplished across the property of the adjacent property owner and not from the highway.
7. That upon completion of the landscaping, any fences or physical barriers, including a maintenance gate, required to control access onto the highway right-of-way will be placed by the DEVELOPER in accordance with the approved plan. Security of the maintenance gate shall be the sole responsibility of the DEVELOPER.
8. That adequate vegetation will be provided to prevent erosion. In the event that seasonal limitations delay the planting of said vegetation, appropriate temporary erosion control will be provided.
9. To assume all liability for damage of any kind to any persons or property resulting from said landscaping and to defend, indemnify and save the DEPARTMENT harmless from any and all claims of any kind or nature for injury or damage resulting therefrom. In the event of damage to highway property or facilities resulting from the construction of said landscaping, the DEVELOPER agrees to repair such damage or reimburse the DEPARTMENT for such damage at the election of the DEPARTMENT.
10. That should it become necessary for the DEPARTMENT to make improvements to the roadway or the ditch to maintain proper drainage to the highway, the DEPARTMENT shall not be held responsible for any damage to the vegetation or other landscaping thereon and reserves the right to require the DEVELOPER to alter the design of the landscaping or remove it completely, if necessary.
11. That public utilities can occupy the highway right-of-way, and the DEPARTMENT shall not be held responsible for damage to the vegetation or other landscaping during the installation or maintenance of these utility facilities.
12. That no trees will be permitted within 30 feet (or a greater distance, if clear zone requires) of the edge of the roadway surface or upon inslopes, ditches or within the first 5 feet up the backslope, and all vegetation will be trimmed or removed, if necessary, to provide an adequate sight distance triangle at all intersections.
13. Landscaping shall not be permitted on National System of Interstate and Defense Highways and other limited access highways, medians, and within interchange areas or on inslopes. These areas are reserved for landscaping by the DEPARTMENT, municipalities and other governmental agencies.

14. The DEVELOPER will provide a minimum \$175,000 liability insurance policy for the project and the landscape site. The insurance policy will be maintained for as long as the landscape project exists. The DEVELOPER shall have the DEPARTMENT endorsed as an additional named insured on the liability insurance policy to the extent of the State's liability under the provisions of the Governmental Tort Claims Act (51 OS§151 et seq.). A certificate of insurance indicating such coverage will be sent to the DEPARTMENT by the DEVELOPER attached to this Agreement.

If the landscape project involves reconfiguration or replacement of a limited access fence, then the DEVELOPER hereby further agrees:

15. To install the fence, pursuant to the attached specifications and shop drawings that have been pre-approved by the DEPARTMENT, on private property near the Right-of-Way (R/W) line. After DEVELOPER's installation of the fence is inspected and approved by the DEPARTMENT, the DEVELOPER shall remove the DEPARTMENT'S existing "Limits of No Access" fence along the R/W line and dispose of all fencing materials in an appropriate manner.
16. The DEVELOPER will fill post holes and repair any damage caused by the fence replacement operation. The DEVELOPER will set corner/stretchers posts as needed to secure the adjacent fencing on either end of the project work area.
17. The DEVELOPER will ingress and egress the highway R/W during construction of the project only when necessary and only from the DEVELOPER'S property. Any gates required to access the project area will be secured during times when no work is being conducted on the project and will be permanently secured at the completion of the project. The DEVELOPER'S equipment shall not ingress and egress the project work area from the driving lanes of the highway, except in areas that physical barriers prohibit such ingress and egress from the adjoining property.
18. The DEVELOPER shall place appropriate "Road Work" warning signs on the highway when equipment or personnel are within (30) feet of the edge of the paved shoulder, including when entering and exiting the project site.
19. The DEVELOPER shall be solely responsible to maintain the new fence, in accordance with this agreement. Should the DEVELOPER refuse or neglect to make repairs to the fence in a timely manner, the DEPARTMENT reserves the right to place standard "Limits of No Access" fencing at locations of breaches in said fence to maintain the "Limits of No Access". Any material later removed and replaced at such locations by the DEVELOPER shall be returned to the DEPARTMENT.
20. The DEPARTMENT reserves the right to replace the "Limits of No Access" fence on the R/W line to insure that the original design and function of the fence is maintained if the DEVELOPER'S fence fails for any reason and is not repaired or replaced to the DEPARTMENT'S satisfaction. At such time the DEPARTMENT will void and discontinue this agreement.

DEPARTMENT OF TRANSPORTATION

Field Division Engineer

Design Division Engineer

State Maintenance Engineer

Assistant Director-Operations

DEVELOPER

Address

Attested By: Notary Public / Commission Number

Commission Expires

If DEVELOPER is Other Than Adjacent Property Owner,
Property Owner Concurrence

By