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# MEMO

APPROVED  
1/30/2023



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DATE: January 25, 2023  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – City of Broken Arrow

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners and the City of Broken Arrow for infrastructure improvements consisting of city wide emergency housing repairs, old town waterline replacement and Elm Avenue storm drainage replacement through June 30, 2023. The City shall be allocated \$406,225.00 from Fiscal Year 2022 Tulsa County Community Development Block Grant Urban County funds as further described in the attached.

Respectfully submitted for your approval and execution.

MME / jdf

SUBMITTED FOR: The January 30, 2023 BOCC meeting agenda.

CMF# 20230131

## Contract For Public Improvements For Community Development Block Grant Program

This Contract for Community Development Block Grant (“CDBG”) funds is made and entered into by and between Tulsa County (“COUNTY”), and the City of Broken Arrow (“CITY”).

This Contract shall be in effect as of the date signed below and shall be in effect through the 30th day of June, 2023. If the funds are not exhausted at the end of the contract period, the Contract period may be extended by mutual agreement of both parties.

**WHEREAS**, the Housing and Community Development Act of 1974, as amended (24 U.S.C. 93-383 et seq.), (the “Act”), provides that Community Development Block Grant, (“CDBG”), funds may be used for the support of activities that provide decent housing and suitable living environments and expanded economic opportunities principally for persons of low- and moderate-income; and,

**WHEREAS**, CDBG Regulations 24 CFR 570.307(a) allow counties having a total combined population of 200,000 or more from the unincorporated areas and participating incorporated areas to qualify as an urban county; and,

**WHEREAS**, a Cooperation Agreement between the County and the City has been executed for the purpose of participation in the Tulsa County Urban County Community Development Block Grant Program for Federal Fiscal Years 2020-2022; and,

**WHEREAS**, the City desires to enter into a Contract with Tulsa County, as lead entity of the Tulsa County Community Development Block Grant Urban County Program (CFDA 14.218) pursuant to Title I of the Housing and Community Development Act of 1974, as amended; to receive an allocation of FY2022 Tulsa County CDBG Urban County funds for the purpose of public improvements (**B-22-UC-40-0001**);

**NOW THEREFORE**, the parties do mutually agree as follows:

### I. Scope of Services

The City shall be responsible for the oversight of projects to meet the objectives of the Community Development Block Grant program in accordance with the terms and conditions as set forth herein.

The City agrees to perform those duties, obligations, and representations contained in its application to Tulsa County and to be bound by the provisions of its application, all amendments thereto and all correspondence relating thereto, which were submitted to and accepted by Tulsa County in contemplation of this contract, said application being incorporated herein and made a part hereof by reference.

**Projects:**

City Wide Emergency Housing Repairs (\$56,225).

Emergency repairs assistance program for income eligible owner-occupied residences city wide in Broken Arrow. Eligibility based upon income and ownership/occupancy requirements.

Old Town Waterline Replacement (\$200,000).

Replacement of approximately 850' Linear Feet of 12" waterline along Main Street from Elgin Street to Midway Street with all associated pavement repairs and appurtenances.

Elm Avenue Storm Drainage Replacement (\$150,000).

Replacement of existing drainage structure on Elm Avenue 200-feet south of Greely Street, consisting of the replacement of existing culvert, along with relocation of nearby waterline and sanitary sewer lines affected by the drainage structure replacement.

**II. Budget**

The City shall be allocated \$406,225.00 from Fiscal Year 2022 Tulsa County CDBG Urban County funds for infrastructure improvements.

**III. Performance Measurement**

The project must be under construction with a Notice To Proceed issued no later than 180 days from the date of approval of this contract by the County. Failure to commence construction within the timeframe may result in withdrawal of CDBG funds by the County for noncompliance of timely expenditure of funds.

**IV. Method Of Payment**

- a. Payment will be made to the City on either a reimbursement of paid invoices basis or submission of actual payable invoices. The City shall submit a "Request for Funds" form to the program administrator, INCOG for approval and payment by Tulsa County.
- b. City will maintain proper financial records for the project, which the County reserves the right to inspect on a periodic basis.
- c. In no event will the total compensation to be paid hereunder exceed the expressly agreed maximum sum of Four Hundred Six Thousand Two Hundred Twenty Five dollars (\$406,225.00) for all services required.

**V. Reversion of Assets**

After reconciliation of the project books and submittal of remaining unpaid claims to the County, the City shall return any unused CDBG funds within 30 days of the date this agreement terminates or expires.

## **GENERAL TERMS AND CONDITIONS**

### **Subcontract Notification Provision**

None of the work and services covered by this contract may be subcontracted without written consent of the County. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this agreement. In no event will the City incur any obligation on the part of the County.

### **Modification**

This contract is subject to such modification as may be required by federal or state law or regulations. The work and services to be performed and the total contract amount may be modified only upon written agreement of both parties.

### **Disputes, Interpretation, Remedies**

- a. In the event the parties fail to agree on interpretations of this contract, the details of such disagreement shall be forwarded to the legal counsels of both parties for review and recommendation and such recommendations forwarded to HUD, who shall make the final determination.
- b. Neither forbearance nor payment by the County shall be construed to constitute waiver of any remedies for any default or breach by the City that exists then or occurs later.

### **Severability Clause**

If any provision under this contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.

### **Hold Harmless Clause**

City shall, within limitations placed on such entities by any law, hold harmless the United States government, its agents, officers, and employees and the County, its agents, officers, and employees from all claims and actions, and all expenses defending same, that are brought as a result of any injury or damage sustained by any person or property which injury or damage is legally determined to be caused by any act or omission of City committed within the performance of its duties under this contract. City shall, within limitations placed on such entity by any law, hold harmless the United States government, its agents, officers, and employees and the County, its agents, officers and employees from any claim or amount recovered as a result of infringement of patent trademark, copyright, or from any claim or amounts arising or recovered under Workers' Compensation Laws, to the extent such claims arise out of acts committed in furtherance of this contract. In any agreement with any sub-recipient or any agent for City, City will specify that such sub-recipient or agents shall hold harmless the United States government, its agents, officers, and employees, and the County its agents, officers and employees for all the herein before described expenses, claims, actions, or amounts recovered, which is legally determined to be caused by this sub-recipient or agent in the performance of their duties relating to this contract.

## **Personnel**

- a. The City represents that it will secure all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County.
- b. The City has full responsibility for payment of worker's compensation insurance, unemployment insurance, social security, state and federal income tax and any other deductions required by law for its employees.
- c. All services required hereunder will be performed by the City or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

## **Termination of Contract for Cause**

If, through any cause, the City shall fail to fulfill in a timely and proper manner his/her obligations under this contract, or if the City shall violate any of the covenants, agreements, or stipulations of this contract, the County shall thereupon have the right to terminate this contract by giving written notice to the City of such termination and specifying the effective date thereof, at least 15 days before the effective date of such termination. In such event, the City shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the City shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the City.

## **Termination of Contract for Convenience**

Either the City or the County may terminate this contract at any time by giving at least 15 days notice in writing to the other party. If the contract is terminated as provided herein, the City will be paid for the services provided and all allowable expenses incurred up to the termination date.

## **Conflict of Interest**

No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any function or responsibility in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this agreement, and the City shall take appropriate steps to assure compliance.

## **Interest of City and Employees**

The City covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The City further covenants that in the performance of this agreement no person having any such interest shall be employed.

## **Reports and Information**

The City, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to the contract, costs and obligations incurred or to be incurred in connection there with and any other matters covered by this contract.

City shall furnish the County narrative reports and financial reports related to the elements of this contract in the forms and at such times as may be required by the County or federal grantor agencies.

## **Compliance with Local Laws**

The City shall comply with all applicable laws, ordinances and codes of the state and local governments.

## **Copyright**

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the City.

## **Records and Audits**

City shall retain all books, documents, papers, records, and other materials involving all activities and transactions related to this contract for at least five (5) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later. City shall, as often as deemed necessary by the County, permit authorized representatives of the County and its Auditors, the U.S. Department of Housing and Urban Development, the federal or state Department of Labor and the U.S. Comptroller General to have full access to and the right to fully examine all such materials.

The City shall comply with 2 CFR Part 200 requirements, where applicable. The OMB guidance is hereby made a part of this contract. The City shall provide a copy of its annual audit to the County for the periods of these CDBG funds within the earlier of 30 days after the City's receipt of the auditor's report or nine months after the end of the audit period.

## **Federal Funds in Excess of \$750,000**

If the City expends \$750,000 or more in a year in Federal awards from all sources, the City shall comply with 2 CFR 200 Subpart F requirements and have a Single Audit conducted. The OMB guidance is hereby made a part of this contract. The City shall provide a copy of its Single Audit to the County for the periods of these CDBG funds within the earlier of 30 days after the City's receipt of the auditor's report or nine months after the end of the audit period.

## **Anti-Kickback Regulations**

The City shall comply with all applicable anti-kickback regulations covered under the Department of Labor Regulation 29 CFR, Part III.

## Equal Employment Opportunity

The City shall comply with the following equal opportunity requirements as part of CDBG assurances:

a. Civil Rights Act of 1964, Title VI

City shall comply with Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall on the grounds of race, religion, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance.

b. Housing and Community Development Act of 1974, Section 109

City shall comply with Section 109 of the Housing and Community Development Act of 1974, which provides that no person in the United States shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded under the Act.

c. Housing and Urban Development Act of 1968, Section 3

City shall comply with Section 3, which provides that to the greatest extent feasible, training and employment opportunities shall be made available to lower-income residents of the unit of local government or metropolitan area (or non-metropolitan county) in which the project is located and that contracts be awarded to small businesses located within or owned in substantial part by residents of the same metropolitan area (or non-metropolitan county) as the project.

d. Affirmative Action

City shall take affirmative actions steps to contract with small and minority owned firms and women business enterprises in a part of the requirements of 24 CFR Part 85.36 or 24 CFR Part 570, Sub-part J. Affirmative Actions steps include, but are not limited to, the following:

1. Including qualified small, minority and women business enterprises on solicitation lists.
2. Assuring that small, minority and women business enterprises are solicited whenever they are potential sources.
3. When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, minority and women business enterprises participation.
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, minority and women business enterprises.

5. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U.S. Department of Commerce and the local minority business development center that assists with management and technical aspects and maintains a directory of minority contractors, suppliers and vendors.

### **Labor Standards**

- a. The City shall comply with the requirements of Davis-Bacon Act (40 USC Section 276a-276a-5), which requires payment of the prevailing wage for the locality to workers on construction contracts over \$2,000. Housing rehabilitation projects of fewer than eight units are exempt. Regulations are at 29 CFR, Part 5. The City further certifies that it shall include in its bidders' packages the U.S. Department of Labor Wage Determination List and a statement that the Contractor and any subcontractors must comply with these wage rates in performance of the work required.
- b. Copeland (Anti-Kickback) Act (18 USC Section 874, 40 USC Section 176c), which applies to all contracts covered by Davis-Bacon and provides that workers must be paid weekly, with only permissible deductions allowed. Regulations are at 29 CFR, Part 3;
- c. Contract Work Hours and Safety Standards Act (40 USC Section 327, et seq.) which requires overtime compensation. Regulations are at 29 CFR, Part 5.

### **Acquisition and Relocation**

Uniform Relocation Assistance and real Property Acquisition Policies Act of 1970, as amended (P.L. 91-646, P.L. 100-17) Section 305 of Title III and Section 210 of Title II require State and local recipients to comply with real property acquisition and relocation requirements set forth in said Act. Regulations are at 49 CFR, Part 24.

### **Age Discrimination Act of 1975**

City shall comply with the provisions of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds.

### **Americans With Disabilities Act of 1990**

City shall comply to the extent required with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabled status in any publicly funded program and activity.

### **Rehabilitation Act of 1973, Section 504**

City shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in any programs or activities receiving federal financial assistance.



IN WITNESS WHEREOF, the City and County have executed this contract as of the date first written above.

**City of Broken Arrow, Oklahoma**

By Debra Wimpee, the Honorable City Mayor

**ATTEST:**

Curtis Green  
**City Clerk**



**Approved:**

Danny Littlefield  
**City Attorney**

**Tulsa County Board of Commissioners**

By Kelly Chikley Chair

**ATTEST:**

Michael Hill  
**County Clerk**



**Approved As To Form:**

[Signature]  
**Assistant District Attorney**