

PENDING APPROVAL

REQUISITION SHEET MUST BE ATTACHED(If Applicable)
REQUISITION NO. _____

**OKLAHOMA COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM REQUEST SHEET

**For the April 5, 2010 Agenda
(DATE)**

DEPT: Engineering FOR: _____ EXT. NO. 1469

SUBJECT: Agreement with Turnpike Authority, Oklahoma County and ODOT – EOG Phase I

NAME OF FUNDS: _____ FUND CODES: _____

AGENDA ITEM: Discussion and possible action for approval of Contract between Oklahoma Turnpike Authority, the Oklahoma Department of Transportation and Oklahoma County for Project No. E-97-F, for the construction of the Eastern Oklahoma County Gate, Phase I. This item is requested by Willa Johnson, County Commissioner, District 1 and has been approved as to form and legality by John Jacobsen, Assistant District Attorney. (Document Received)

(ALL NECESSARY DOCUMENTATION MUST BE ATTACHED)

APPROVED BY ENGINEER
(If Applicable)

Stacey T. [Signature]
County Engineer

APPROVED BY D.A.
(If Applicable)

[Signature] 3/30/2010
Asst. District Attorney

APPROVED BY PURCHASING
(If Applicable)

Jane Boston [Signature]
Purchasing Agent

**NOTE: A COMMISSIONER MUST APPROVE ALL EMERGENCY REQUESTS
FOR ANY ITEM SUBMITTED AFTER THE 10 DAY DEADLINE**

DATE OF REQUEST: _____ BY: _____

APPROVED BY: _____
County Commissioner

Number of Original Documents to be Returned to your Department _____

Special Instructions: _____

PENDING APPROVAL

**AGREEMENT AND RENEWAL
BETWEEN OKLAHOMA COUNTY,
THE OKLAHOMA TURNPIKE AUTHORITY
AND THE OKLAHOMA DEPARTMENT OF TRANSPORTATION
FOR THE CONSTRUCTION OF THE EASTERN OKLAHOMA COUNTY GATE
PHASE I
ON THE TURNER TURNPIKE.**

OKLAHOMA COUNTY PROJECT NO. E-97-F

WITNESSETH:

WHEREAS, it is the intention of the OKLAHOMA TURNPIKE AUTHORITY (“OTA”), the OKLAHOMA DEPARTMENT OF TRANSPORTATION (“ODOT”), and the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY (County), public agencies organized and existing under the laws of the State of Oklahoma, to jointly participate in a project to construct a new interchange with an eastbound traffic exit and westbound traffic entrance on the Turner Turnpike to be known as the Eastern Oklahoma County Gate; and

WHEREAS, Oklahoma law 74 O.S. Section 1008 et seq. (the “Act”), which in no way produces a new joint venture, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities and 69 O.S. § 1716 specifically authorizes counties to lease, lend, grant or convey to the OTA on the terms the granting authority deems reasonable and fair , without advertisement, order of the court or other action or formality other than action by the board of county commissioners, any real property to effect the authorized purposes of the OTA, including public roads and other real property; and

WHEREAS, this project will serve present and future industrial developments in the eastern part of Oklahoma County and is needed to provide access to the Turner Turnpike for the area; and

WHEREAS, the OTA, the County and ODOT recognize that continued future development may indicate a need for a westbound traffic exit and an eastbound traffic entrance, and the parties agree to cooperate in assessing such needs that would be addressed in a Phase II project; and

WHEREAS, it is deemed desirable by OTA, the County and ODOT to see these Phase I improvements are completed.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to statutory authority in Title 69, Oklahoma Statutes, §1705 (1), in which OTA is authorized “to receive and accept aid or contributions from any source of either money, property, labor, or other things of value, to be held useful and applied only for the purposes for which such grants and contribution may be made,” Title 69 Oklahoma Statutes, Section 601, and Title 74, Section 1008, the entities agree as follows:

PENDING APPROVAL

A. The County agrees:

That pursuant to fiscal year limitation, Article 10 §26 of the Oklahoma Constitution and subject to appropriation and encumbrance by the County, the following services will be provided:

1. To provide engineering plans, drawings, and specifications suitable to construct an interchange, or part thereof, on the Turner Turnpike to provide access to the Turner Turnpike, which will be known as the **Eastern Oklahoma County Gate**. The engineering plans, drawings, and specifications shall conform to current ODOT and OTA standards, specifications and guidelines. Further, said plans and specifications shall be submitted to OTA and ODOT for review and approval.
2. As funds are appropriated and encumbered, to participate in the cost of acquiring rights-of-way, clearing of all obstructions, including structures of any kind or nature, utility lines, poles, pipelines, or other facilities above or below the surface of the ground as necessary to complete the Phase I project.
3. As funds are appropriated and encumbered, to participate in the cost of construction of the Phase I project.
4. The County's amount of participation shall not exceed Four Million Dollars (\$4,000,000.00) of the Phase 1 project cost, which includes the cost of engineering plans and specifications, acquisition of rights-of-way, relocation of utilities, the construction cost and construction inspection and testing of the project. The Phase 1 project cost will not exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) of which the County's cost will not exceed Four Million Dollars (\$4,000,000.00). The County is hereby credited for the sum of Seven Hundred Sixty Eight Thousand Two Hundred Fifty Dollars (\$768,250.00) based on the County's contribution under Oklahoma County Project E-97-F, at a location subsequently changed, which shall be considered attributed to the total amount of Four Million Dollars (\$4,000,000.00). The amount expended to date is more specifically documented on **Attachment "A"**.
5. Agrees to make ample provisions annually for the proper maintenance of said project local roads, 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. The maintenance requirements will be further identified in a separate Maintenance Agreement executed by the County and OTA.
6. As warranted, will periodically review the adequacy of the aforesaid project to ensure 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 improvements.

PENDING APPROVAL

7. Upon completion of the aforesaid project the County, as appropriate hereby specifically warrants and agrees that the County assumes any and all financial obligations for the operation, use, and maintenance of the aforesaid project as more specifically identified in the Maintenance Agreement executed by the County and OTA.

B. Oklahoma Turnpike Authority (OTA) agrees:

1. As funds become available to participate in the cost of acquiring rights-of-way, clearing of all obstructions, including structures of any kind or nature, utility lines, poles, pipelines, or other facilities above or below the surface of the ground as necessary to complete the Phase I project.
2. Based on OTA review and determination, if future development and traffic in the area warrants the need and renders a Phase II project feasible and economically sound, to cooperate with local entities for Phase II construction.
3. Funds to be used in the construction of ramps and plazas and right-of-way acquisition in an amount not to exceed 50% of the total Phase I project cost or Three Million Five Hundred Thousand Dollars (\$3,500,000.00), whichever is less, payable to ODOT as required by ODOT to let the project and begin construction. Maintenance of the Eastern Oklahoma County Gate (specifically the ramps, signs, drain structures, fences, lighting and related toll facilities providing access to and from the Turner Turnpike to local roads) in a manner consistent with the maintenance of its other turnpike gates. The maintenance requirements will be further identified in a separate Maintenance Agreement executed by the OTA and the County.
4. To make ample provisions annually for the proper maintenance of said facilities as described in item B. 3. of this Agreement, including the provision of competent personnel and adequate equipment, specifically, to provide all required maintenance of the agreed items during the critical period immediately following construction and to keep the facilities in good and safe condition for the benefit of the traveling public.
5. As warranted, will periodically review the adequacy of the aforesaid facilities described in item B. 3. of this Agreement to ensure the safety of the traveling public and should the OTA determine that further modifications or improvements be required, the OTA shall take such actions as are necessary to make such modifications or improvements.
6. Upon completion of the aforesaid project the OTA, as appropriate, hereby specifically warrants and agrees that the OTA assumes any and all financial obligations for the operation, use, and maintenance of the aforesaid project as more specifically identified in the Maintenance Agreement executed by the OTA and the County.

C. Oklahoma Department of Transportation (ODOT) agrees:

PENDING APPROVAL

1. ODOT proposes to submit to the Transportation Commission for approval of funding, a Phase I project to construct these improvements, more specifically described as Hogback Road at I-44 Interchange, Hogback Road, Local Roads #1 and #2, and Access Road and will recommend it's approval by the Federal Highway Administration for construction with federal funds apportioned to the State.
2. Federal Funds, two million dollars (\$2,000,000.00), have been made available from Section 115 of the 2004 Transportation, Treasury and Independent Agencies Appropriation Act, as designated OKO39 for the construction of Eastern Oklahoma County Gate.
3. To advertise for bids, and let and award the contract. ODOT shall obtain the County's and OTA's shares upon receipt of written invoice.
4. To participate in the Phase I project cost not to exceed the before mentioned Two Million Dollars (\$2,000,000.00) of Federal Funds.

D. The County, ODOT and OTA agree:

1. To participate in the cost of the Phase 1 project as described herein in a cumulative amount not to exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000.00).
2. To cooperate in assessing future needs for a Phase II project.
3. No party to the Agreement shall be liable for the acts and omissions of the other parties or for failure to inspect or supervise the performance of the other parties. Each party shall be responsible for the negligent acts of its own employees. Notwithstanding anything herein to the contrary, neither County, OTA nor ODOT waive any rights or privileges in its favor under the laws of Oklahoma for political subdivisions, political subdivisions liability, instrumentalities of the state, the Governmental Tort Claims Act.
4. The parties understand and agree that this Agreement in no way relieves OTA of its primary duty to maintain the Eastern Oklahoma County Gate facilities as described in item B. 3. of this Agreement in a reasonably safe condition for travel by the public.
5. It is understood by the parties that the construction cost estimate is approximate and may be subject to adjustment due to bid prices, construction supervision costs, and/or other items incurred during construction. Upon final acceptance of the project, the amount of funds deposited by the county will be deducted from the County's obligation of the actual construction costs and a refund to the County will be made by ODOT or additional funding will be requested from the County.

PENDING APPROVAL

6. The construction inspection, materials testing and construction administration will be conducted in accordance with ODOT procedures and requirements in order to retain Federal-Aid eligibility and will be financed in accordance with the not to exceed provisions of this agreement at ratios determined appropriate based on the Federal-Aid eligibility of construction activities and the availability of OTA and County funding.
7. It is understood by the parties that no ODOT funds are to be utilized in any phase or aspect of this project. Only funding described in this agreement and specifically designated Federal funds in the amount of two million dollars (\$2,000,000) from Section 115 of the 2004 Transportation, Treasury and Independent Agencies Appropriation Act are available to finance this project.
8. The County and OTA agree to execute a jointly developed Maintenance Agreement delineating their respective maintenance responsibilities related to the project upon commencement of construction of the project.
9. The County and OTA will work cooperatively to transfer all right-of-way to the OTA by legal instrument for those portions of the project that are required by OTA for the ramps and related maintenance obligations of the OTA.
10. Compliance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252.42, U.S.C. 200d-35 seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, "Nondiscrimination of Federally-Assisted Programs of the Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964".
11. This agreement may be executed in counterparts, each of which shall be deemed an original document, but all of which will constitute a single document. This document will not be binding on or constitute evidence of a contract between the parties until all have executed and delivered this document.

Term of Agreement and Renewal

It is agreed between the parties that any party to this Agreement may terminate this Agreement any time before the end of the fiscal year for any reason after giving the other parties thirty (30) days prior written notice, and may terminate immediately if OTA or ODOT breaches any of the terms of this Agreement.

This Agreement shall be effective upon execution by all parties and will expire on June 30, 2010 and shall automatically renew for a period of Two (2) consecutive Fiscal Years unless either party gives notice of termination as described therein. Each annual renewal period shall expire on the last day of the then current fiscal year of the County. It is the present intent of the County to continue this Agreement for an additional two (2) fiscal years. In no event shall the County's obligation be deemed to continue past the end of the County's fiscal year end, nor shall the County be deemed to be indebted beyond the indebtedness created by each fiscal year's obligation.

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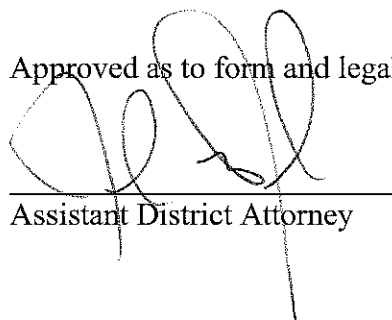
Legal Authority

It is expressly understood that the County is a subdivision of the State of Oklahoma, and consequently, may only enter into contracts pursuant to the procedures and with the limitations provided by Oklahoma law, including Article 10, § 26, of the Oklahoma Constitution, and Title 51, Oklahoma Statutes, § 151, et. Seq.

It is understood the estimated time from start to finish of this project henceforth is three (3) years. Execution of this Agreement is an acknowledgement by OTA & ODOT that the County may only contract on a year-to-year basis pursuant to Article 10, §26, of the Oklahoma Constitution.

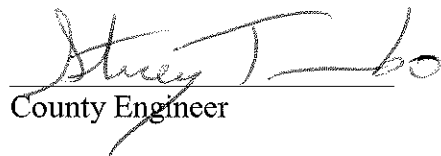
PENDING APPROVAL

Approved as to form and legality this 29 day of March, 2010



Assistant District Attorney

APPROVED



County Engineer

APPROVED this _____ day of _____, 2010

BOARD OF COUNTY COMMISSIONERS
OKLAHOMA COUNTY, OKLAHOMA

Chairman

Member

Member

ATTEST:

Carolynn Caudill, County Clerk

PENDING APPROVAL

OKLAHOMA TURNPIKE AUTHORITY

APPROVED this _____ day of _____, 2010.

BY: _____
Chairman

BY: _____
Director

Approved As To Form: _____
OTA General Counsel

PENDING APPROVAL

OKLAHOMA DEPARTMENT OF TRANSPORTATION

APPROVED this _____ day of _____, 2010.

BY: _____

Name and Title