

PENDING APPROVAL

OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM REQUEST SHEET

FOR THE _____ Next _____ AGENDA

(THE DEADLINE IS ONE WEEK PRIOR TO THE DATE THE AGENDA IS TO BE POSTED)

DEPARTMENT: _____ ENGINEERING _____ REQUESTED BY: _____ STACEY TRUMBO _____

REQUISITION NO.: _____ NA _____ REQUISITION SHEET ATTACHED: _____ YES _____ N/A _____

NAME OF FUNDS: _____ NA _____

FUND NUMBERS: _____ / _____ / _____

PLEASE INITIAL IF PRIVACY/PROTECTED INFORMATION EXISTS: _____ YES _____ X _____ N/A _____

NUMBER OF ORIGINAL DOCUMENTS TO BE RETURNED TO YOUR DEPARTMENT: 2 _____

Discussion and possible action for approval of Right-of-Way, Public Utility and Encroachment Agreement between the Oklahoma Department of Transportation, and Oklahoma County for Oklahoma County Project 3-2007-D-BR, Bridge and Approaches on Sorghum Mill Road and Western Avenue over Chisholm Creek. This item is requested by Ray Vaughn, County Commissioner, District 3 and has been approved as to form and legality by John Jacobsen, Assistant District Attorney. (Document Received)

APPROVED BY DA
(If Applicable)

APPROVED BY ENGINEER
(If Applicable)

APPROVED BY PURCHASING
(If Applicable)


ASSISTANT DISTRICT ATTORNEY

COUNTY ENGINEER

NA
PURCHASING AGENT

Please initial if privacy/security protected information exist

DISTRICT ATTORNEY – PRIVACY/SECURITY PROTECTED INFORMATION: _____ YES _____ N/A _____

COUNTY CLERK – PRIVACY/PROTECTED INFORMATION: RC YES _____ N/A _____

(NOTE: THE CHAIRMAN/CHIEF DEPUTY MUST APPROVE ALL EMERGENCY REQUESTS FOR ANY ITEM SUBMITTED AFTER THE DEADLINE)

DATE OF REQUEST: _____ APPROVED BY: _____

CHAIRMAN

REQUEST FOR DISTRICT ATTORNEY LEGAL SERVICES

THIS FORM IS TO BE USED TO REQUEST ADVICE AND/OR REPRESENTATION FROM THE DISTRICT ATTORNEY'S OFFICE REGARDING THE COUNTY OF OKLAHOMA, COUNTY OFFICIALS AND EMPLOYEES AS REQUIRED BY SECTIONS 215.4, 215.5, 215.25 AND 215.26 OF TITLE 19 OF THE OKLAHOMA STATUTES.

IF ADVICE IS SOUGHT, THE REQUEST MUST BE SIGNED BY AN ELECTED COUNTY OFFICER. THIS FORM MUST BE FILLED OUT AND SUBMITTED TO THE CIVIL DIVISION OF THE OKLAHOMA COUNTY DISTRICT ATTORNEY'S OFFICE IN A TIMELY MANNER. ALL RESPONSES TO REQUESTS FOR ADVICE WILL BE IN WRITING.

IF THE REQUEST IS FOR LEGAL REPRESENTATION UNDER 19 O. S. SECTION 215.25, THE REQUEST MUST BE SUBMITTED IN WRITING EARLY ENOUGH TO PERMIT THE DISTRICT ATTORNEY'S OFFICE ADEQUATE TIME TO COMPLETE A THOROUGH "GOOD-FAITH-AND-COURSE-OF-EMPLOYMENT" INVESTIGATION AS CONTEMPLATED BY 19 O.S. SECTION 215.26.

DATE OF REQUEST: 8/9/10
COUNTY DEPARTMENT MAKING REQUEST: Eng

STATE WITH SPECIFICITY, WHAT THE REQUEST IS AND WHY THE ASSISTANCE OF THE DISTRICT ATTORNEY'S OFFICE IS NEEDED:

ROW/Utility Agreement with ODOT

ATTACH ADDITIONAL DOCUMENTS AS APPROPRIATE. (NOTE: Advice, reviews and approvals as to "form and legality" are based on the documentation and information provided to the District Attorney's Office. Please provide all relevant information when requesting an opinion or review from the District Attorney's Office).

COUNTY OFFICER

DATE RECEIVED BY DISTRICT ATTORNEY: 8/10/10

REPLY BY DISTRICT ATTORNEY: Reviewed

DAVID PRATER
DISTRICT ATTORNEY

By: [Signature] 2010 AUG 11 P 12:54

RECEIVED
AUG 18 2010
CIVIL DIVISION
DISTRICT ATTORNEY

RECORDED OR FILED
OKLAHOMA COUNTY
STATE OF OKLAHOMA

PENDING APPROVAL

RIGHT-OF-WAY, PUBLIC UTILITY AND ENCROACHMENT AGREEMENT

This Agreement, made and entered into this ___ day of _____, 20___, by and between the Department of Transportation, State of Oklahoma hereinafter the Department, and the Board of County Commissioners of Oklahoma County, Oklahoma hereinafter the County,

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:

1. That the County proposes construction of bridge and approaches over Chisholm Creek on county road EW-90 0.1 mile east of NS-307 according to plans designated as BRO-155D(638)CO Job No. 25011 (04) Const., (03) Util., (02) R/W which plans are by reference made a part of this agreement.
2. That the participation in the cost between the undersigned parties for all necessary right-of-way shall be as follows:
 - (a) The County agrees to furnish to the Department all the land, clear of all obstructions, including structures of any kind or nature, gasoline pumps, islands, underground tanks and utility lines, poles, pipelines, or other facilities above or below the surface of the ground, without cost to the State for the construction of this project.
 - (b) The County agrees 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 necessary right-of-way and the relocation of any displacees.
 - (c) The County agrees 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-et 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 Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964".
 - (d) The County agrees that as a condition to receiving any available County Road Improvement Revolving Funds as provided by Title 69 O.S. Section 664, et seq. for acquisition of right-of-way and/or for the rearrangement of utilities for this project, prior written approval by the Chief, Right-of-Way & Utilities Division for the Department shall be required.
 - (e) 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. Prior written approval by the Chief, Right-of-Way & Utilities Division for the Department shall be required before any sale is made.

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(f) 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 County 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 County or the Department arising from the County'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 County Road System within the limits of the County. Provided, nothing herein shall require the County to reimburse the Department for damages arising out of bodily injury to persons or damage to property 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 County. No liability shall attach to the Department except as expressly provided herein. Said indemnification shall include all causes of action arising from contract, tort, negligence, condemnation or inverse condemnations.

3. The County agrees to maintain this project after construction.
4. The Department reserves the right to make such changes in said plans as may be necessary for the proper construction of said project.
5. 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.

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6. If the acquisition of right-of-way for this project causes the displacement of any person, business or non-profit organization, the County 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 County 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 County 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 County 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 County. Before any relocation assistance payments are made by the County, 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.

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IN CONSIDERATION of the grants and covenants by County herein contained and the faithful performance thereof by County, Department agrees to construct said project in accordance with said plans and specifications; provided that the right to make such changes in the plans and specifications as are necessary for the proper construction of said project is reserved to Department.

IN WITNESS WHEREOF, the parties hereto and hereunto set their hands the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OKLAHOMA COUNTY, OKLAHOMA

COUNTY CLERK

CHAIRMAN

MEMBER

MEMBER

Approved: [Signature] DA, ASG 8/10/2010

REVIEWED AND APPROVED AS TO
FORM AND LEGALITY

DEPARTMENT OF TRANSPORTATION
STATE OF OKLAHOMA

CHIEF, LEGAL DIVISION (ODOT)

DIRECTOR

PENDING APPROVAL

RESOLUTION

WHEREAS, it appearing reasonable and necessary for the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY, OKLAHOMA, to underwrite the acquisition of right-of-way in connection with the construction of a public project known as BRO-155D(638)CO J/P 25011 (04) Const., (03) Util., (02) R/W in accordance with the terms and tenor of 69 O.S. 2001, Section 1205, 1206, 1401 and 1403.

NOW, THEREFORE, BE IT RESOLVED by the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY, OKLAHOMA, sitting in regular session that such contract be entered and that a copy of same be hereto attached and made a part hereof by reference, all as provided by law.

ATTEST:

COUNTY CLERK

CHAIRMAN

MEMBER

MEMBER

Approved:
[Signature]
8/10/2010