

CONTRACT AGREEMENT
Emergency and Transportation Revolving, ETR Fund
06/21/2021

THIS Contract for funding (the "Contract") is entered into by and between Muskogee, Board of County Commissioners, and the Oklahoma Cooperative Circuit Engineering Districts Board, created pursuant to 69 O.S. § 687.1(J) ("OCCEDB"). The capitalized terms used in this Contract will have the meanings assigned to them in this Contract.

WHEREAS, 69 O.S. § 687.1(J) provides for the creation of the OCCEDB with the power to conduct business, including developing policies and procedures, incurring expenses, and contracting for services to advance the development and operations of Circuit Engineering Districts ("CEDs");

WHEREAS, 69 O.S. § 687.3 created in the Oklahoma State Treasury a Emergency and Transportation Revolving (the "ETR") fund for which monies are expended for the purpose of emergency or transportation projects on the County Highway System or for the converting to/purchase of CNG vehicles and originate from a onetime transfer of 25 million from the Oklahoma Department of Transportation's State Highway Construction and Maintenance Fund;

WHEREAS, 69 O.S. § 687.3 provided OCCEDB the authority to adopt rules governing the application, qualification and reimbursement procedures for counties seeking ETR funding;

WHEREAS, the OCCEDB finds it necessary and in its best interest to develop adequate procedures and the appropriate internal controls to ensure the protection of public funds that are to be administered and distributed by the OCCEDB from the ETR Fund; and

WHEREAS, Muskogee County is competent to construct transportation projects on the County Highway System, pursuant to Title 69 § 101 and shall provide appropriate internal controls to ensure the protection of public funds.

In consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement, the receipt and sufficiency of which all parties to this Contract acknowledge, the parties to this Contract mutually agree as follows:

Project Number: ETRCR 2-51-1(05)22 Requested Amount: \$ 750,000.00

Anticipated Construction Start Date (if applicable): July 2021

Anticipated Reimbursement Date: November 2021

Anticipated Reimbursement Fund: Maintenance and Operation

1. AVAILABILTY OF FUNDS

Payments pursuant to this contract are to be made only from monies made available to the State Treasurer's Office for the ETR fund. Notwithstanding any other provisions, payments to the County by the State Treasurer's Office are subject to the availability of such funds, as determined by State action and/or law. The State Treasurer may take any action necessary in accordance with such determination.

2. MODIFICATION (ADMENDMENT)

- a. This contract is subject to such modification as may be required by State law. Any such modification may be done unilaterally by the OCCEDB.
- b. Except as otherwise provided in this contract, the work and services to be performed and the total contract amount may be modified only upon written agreement of the duly-authorized representatives of the County, CED and OCCEDB.
- c. Revisions to the contract must be approved in writing in advance by the OCCEDB.
- d. A waiver by the OCCEDB of any provision of this contract must be in writing and signed by the President or Executive Board member of the OCCEDB.

3. THE OCCEDB, OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES AND STATE TREASURER'S OFFICE

The OCCEDB shall submit a claim and a certificate from the OCCEDB stating that all the projects listed meet the requirements of state law and the rules adopted by the OCCEDB to the Office of Management and Enterprise Services for payment. The Office of Management and Enterprise Services shall authorize payments to the counties from the monies held in the State Treasury in the ETR fund upon receipt of a completed claim form.

4. COUNTY

- a. The County or its Subcontractor will provide the necessary personnel, facilities, supplies, equipment and/or related resources and skills to accomplish all projects in accordance with the terms and conditions of this contract and the current adopted ETR policies and procedures. The County agrees to perform those duties, obligations and representations contained in this contract and all amendments thereto submitted to and accepted by the OCCEDB, and to be bound by the provisions of all subcontracts said application being incorporated herein and made a part

hereof by reference.

- b. All of the work and services required shall be performed by the County or Subcontractor, or be performed under the County's or Subcontractor's supervision, and all personnel engaged therein must be fully qualified and authorized under State and local law to perform such work and services.
- c. In no event will this contract or any subcontract incur obligation on the part of the OCCEDB, Office of Management and Enterprise Services and the State Treasurer's office beyond that stated in section 3, above.

5. CERTIFICATIONS BY COUNTY

- a. The County expressly agrees to be solely responsible to ensure that the use of monies received under this contract complies with all State statutes and other legal authority. The County recognizes that it is responsible for assuring financial programmatic compliance by its Subcontractors.
- b. The County specifically certifies and assures that:
 - (1) It will adhere to State regulations pertaining to non-discrimination.
 - (2) It will maintain fiscal controls and accounting procedures adequate to ensure the proper disbursement and accounting for all funds received pursuant to this program.

6. LIMITED LIABILITY CLAUSE

OCCEDB and COUNTY mutually recognize that each party is a Governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. § 151 et seq.). The OCCEDB and COUNTY hereby mutually agree that each is and may be held severally liable for any and all claims, demands, and suits in law or equity, of any nature whatsoever, paying for damages or otherwise, arising from any negligent act or omission of any of their respective employees, agents or contractors which may occur during the prosecution or performance of this Agreement to the extent provided in the Governmental Tort Claims Act. Each party agrees to severally bear all costs of investigation and defense of claims arising under the Governmental Tort Claims Act and any judgments, which may be rendered in such cause to the limits provided by law. Nothing in this section shall be interpreted or construed to waive any legal defense, which may be available to a party or any exemption, limitation, or exception, which may be provided by the Governmental Tort Claims Act.

7. POLITICAL ACTIVITY

- a. No portion of the contract funds may be used for any political activity or to further the election or defeat of any candidate for public office. Nor shall any portion of the contract funds be used to further the adoption or defeat of any bond, proposal or issue brought to a vote of the people.
- b. No portion of the contract funds may be used for lobbying activities.

8. PAYMENTS TO COMPANIES

- a. No contract funds may be paid to any corporation, Limited Liability Company, partnership, proprietor or other private entity except for services to be provided pursuant to an approved project.
- b. No contract funds may be loaned to any corporation, Limited Liability Company, partnership, proprietor or other legal entity.

9. NO-CONFLICT COVENANT

The County covenants that no members or employees of any governing board of the County have any personal or financial interest, direct or indirect, and that none shall acquire any such interest, that would conflict with the full and complete execution of this contract. The County further covenants that in the performance of this contract no person having any such interest will be employed by the County.

10. COMPENSATION TO COUNTY

Funds made available pursuant under this contract shall be used only for expenses for the purposes and activities approved and agreed to by the OCCEDB. No contract funds shall be used for expenses incurred on projects that have not received prior approval by OCCEDB. Contract funds shall not be used for any purpose other than those approved and agreed to by the OCCEDB.

11. RECORDS, REPORTS, DOCUMENTATION

- a. The County shall maintain records and accounts, including equipment, personnel and financial records, which properly document and account for all project funds. Some specific types and forms of records may be required by the OCCEDB.
- b. The County shall furnish the OCCEDB with narrative reports and financial reports related to this contract in the forms and at such times as may be required by the OCCEDB.

- c. The County 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, or as otherwise required by law. The County shall, as the OCCEDB deems necessary, permit authorized representatives of the OCCEDB and the State of Oklahoma to have full access to and the right to fully examine all such materials without prior notice.

12. PAYMENT AND CLOSING OUT

- a. The Contract Agreement shall automatically terminate and all funds reimbursed by the county to the Emergency and Transportation Revolving Fund, unless renewed in accordance with terms set forth below, at the end of the current fiscal year.
- b. The County shall issue or cause to be issued repayment to the "State of Oklahoma ETR Fund" and send the warrant to the Office of Management and Enterprise Services.
- c. The County shall submit to OCCEDB closeout documents such as pictures, costs before future ETR funds are approved by OCCEDB.

13. OPTION TO RENEW

The County is hereby granted successive options to renew this Contract Agreement for additional terms not to exceed one fiscal year each, upon the same terms and conditions, provided that such options may be exercised, as a matter of right, solely and exclusively by the County. The exercise of any such option shall be accomplished the County signing and returning the Contract Agreement Renewal Resolution, furnished by OCCEDB, before the beginning of each Fiscal Year, to the CED board for its approval. The resolution shall then be forwarded to OCCEDB for its approval.

14. INTEREST

Interest earned on Emergency and Transportation Revolving funds by the County may be used for any County transportation project without the written approval of the OCCEDB.

15. INTERPRETATION, REMEDIES

- a. In the event the parties fail to agree on changes or interpretations of this contract, the disagreement shall be submitted to the Office of the Attorney General. The decision of the Attorney General shall prevail.
- b. In the event of any disagreement between the County and the OCCEDB

relating to the technical competence of the work and services being performed and its conformity to the requirements of this contract, the disagreement shall be submitted to the Office of the Attorney General. The decision of the Attorney General shall prevail.

- c. Neither forbearance nor payment by the OCCEDB shall be construed to constitute waiver of any remedies for any default or breach by the County or Subcontractor that exists or occurs later.

16. TERMINATION OR SUSPENSION

- a. This contract may be terminated or suspended in whole or in part at any time by written agreement of the parties.
- b. This contract may be terminated or suspended by the OCCEDB, in whole or in part, for cause, after notice and an opportunity for County to present reasons why such action should not be taken. Grounds constituting cause include but are not limited to:
 - (1) County fails to comply with provisions of this contract or with any applicable laws, regulations, guidelines or procedures, or is unduly dilatory in executing its commitments under this contract.
 - (2) Purposes for the funds have not been or will not be fulfilled or would be illegal to carry out.
 - (3) County has submitted incorrect or incomplete documentation pertaining to this contract.
- c. In the event of termination or suspension, the County shall be entitled to payment for otherwise valid and allowable obligations incurred in good faith prior to notice of such action and to reimbursement for reasonable and necessary expenses. The County shall reduce to the minimum possible all obligations, prepaid expenses and other costs.
- d. The County shall not be relieved of liability to the OCCEDB for damages sustained by the OCCEDB by virtue of any breach of this contract by County or Subcontractor. The OCCEDB may withhold payments due under this contract pending resolution of the damages.

17. ENTIRE CONTRACT

This contract constitutes the entire agreement between the OCCEDB and the County, that it is final and complete. No evidence of alleged prior dealings, course of dealing or performance not specifically set out herein shall be deemed in any sense relevant to supply any unexpressed term, to supplement or qualify this contract or to add any stipulation or obligation different from or inconsistent with the express provisions of this contract.

18. 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.


19. Contacts for this Contract. The contact person for this Contract is:

For the OCCEDB Board: Randy Robinson, P.E.
429 N.E. 50th Street
Oklahoma City, Oklahoma 73105
(405) 516-5319

IN WITNESS WHEREOF, the parties have executed this Contract Agreement as of the latest date shown below written.

Muskogee County
Board of County Commissioners of
Oklahoma

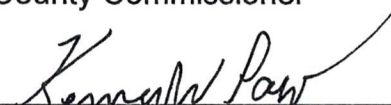
Oklahoma Cooperative Circuit
Engineering Districts Board


County Commissioner


Board Member


County Commissioner


Board Member

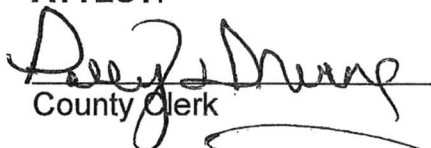

County Commissioner


Board Member

6/21/21
Date

7-28-21
Date

ATTEST:


County Clerk



District Attorney

6/21/21
Date

