

**REQUEST FOR LEGAL SERVICES**

This form is used to provide legal opinions and contract approval by the District Attorney's Office. Only that advice that is related to a pending or potential claim against the County or its officers and employees is protected by the attorney-client privilege. Opinions that are privileged should not be disclosed to anyone or the privilege may be waived.

All legal opinions and approvals rendered are based only on the documentation and information stated below or attached to this form and, thus, it is important that all relevant facts and information be provided at the time of review. Please advise the District Attorney's Office of new or additional information, as it may cause the opinion to change. In all cases, the opinions of the District Attorney's Office are not binding on the County, its officers or employees and may be followed or disregarded in the discretion of the elected official.

Date of Request: 09/24/2024 Department: District 2

State the nature of the legal request: \_\_\_\_\_

Review as to legality and form - Agreement for Specific Assistance City of Nichols Hills/ Bedford Drive

Requested by: Brandi Mertens, Comptroller District 2

**RECEIVED**

**SEP 24 2024**

**CIVIL DIVISION**

\_\_\_\_\_  
County Officer or Department Director

~~DISTRICT ATTORNEY~~  
Reply of District Attorney's Office: \_\_\_\_\_

*Reviewed*

Date of Reply: 9/24/24

*[Signature]*  
Assistant District Attorney



**Commissioner Brian Maughan  
Oklahoma County District 2  
Scope of Work**

**Project:**

Base Repair, Mill and Overlay

**Municipality:**

City of Nichols Hills

**Location:**

Two Blocks of Bedford Drive between Kingsbury Lane and Drury Lane

Length in F

1,300

Width in F

25 Area in SF

30,988

Item #	Description	Qty	Unit	Price Per Unit	Material Costs	District 2 Labor Costs	District 2 Equipment Costs
1	Traffic Control (Contract)				\$ 1,500.00		
2	Demo/Base Stabilization						
	a. Track Hoe	40.00	Hrs	96.16			3,846.40
	b. Operator	40.00	Hrs	27.35		1,094.00	
	c. Cat Steel Roller	40.00	Hrs	30.10			1,204.00
	d. Operator	40.00	Hrs	27.35		1,094.00	
	e. Concrete Saw	20.00	Hrs	11.89			
	f. Operator	20.00	Hrs	27.35			
	g. Dump Truck - 5	40.00	Hrs	117.13			4,685.20
	h. Driver - 5	40.00	Hrs	21.08		843.20	
	i. Laborer - 2	40.00	Hrs	21.08		843.20	
3	Milling						
	a. Contractor	8.00	Hrs	10,000.00	10,000.00		



**AGREEMENT FOR SPECIFIC ASSISTANCE**

**BETWEEN THE CITY OF NICHOLS HILLS AND  
THE BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY**

This Agreement is entered into this \_\_\_\_\_ of \_\_\_\_\_, 2024, by and between the CITY OF NICHOLS HILLS, hereinafter referred to as the “Municipality” and the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY, hereinafter referred to as the “County”, and is to be considered an addendum to the original General Mutual Cooperation Agreement made between the same parties. The terms and conditions of the General Mutual Cooperation Agreement for the current fiscal year entered into between the parties is incorporated by reference herein and made a part of this specific agreement.

**RECITALS**

**WHEREAS**, a portion of a road belonging to the Municipality, located at Bedford Drive, between Kingsbury Lane and Drury Lane is in need of reconstruction, repair, and/or improvement;

**WHEREAS**, the parties have previously entered into a General Mutual Cooperation Agreement allowing for the County to assist the Municipality in reconstruction, repair, improvement, and/or maintenance of their roads which covers the fiscal year beginning July 1, 2024 and ending June 30, 2025; and

**WHEREAS**, it is in the mutual interest and benefit of the Municipality and the County to share in making this reconstruction, repair, and/or improvement to the aforementioned segment of road; and

**WHEREAS**, the Municipality desires to retain the use of County’s equipment, materials and personnel to reconstruct, repair or improve that portion of the aforementioned segment of road; and

**WHEREAS**, the County agrees to provide the equipment, materials, personnel for the project at an *estimated* cost of **\$164,504.65**, but in no event to exceed **\$170,000.00** without further written agreement; and

**WHEREAS**, the Municipality agrees to reimburse the County for 100% of the actual costs of materials; and

**WHEREAS**, the County agrees to in-kind the estimated costs of equipment and personnel; and

**WHEREAS**, this agreement is authorized and provided for by Oklahoma Statutes, specifically by 69 O.S. § 603 and 11 O.S. §36-113; and

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**TERMS AND CONDITIONS OF AGREEMENT:**

1. **PURPOSE OF AGREEMENT:** This agreement is a part of and an addendum to the original Mutual Cooperation Agreement entered into between the parties on the 1<sup>st</sup> day of July, 2023. The purpose of this agreement is to permit the County to assist the Municipality with road improvement, repair, or maintenance on property within the Municipality, such road being more specifically described as: Bedford Drive, between Kingsbury Lane and Drury Lane, which is approximately 1,300 feet of road.
  
2. **DESCRIPTION OF SERVICE:**
  - A. **COUNTY SHALL:**
    - i. Administer the agreement.
    - ii. Agree to incur the costs for labor, equipment, surveys, materials, traffic control as necessary to complete the work/project in an amount not to exceed **One Hundred Sixty-Four Thousand, Five Hundred Four Dollars and Sixty-Five Cents (\$164,504.65)**, as outlined in the attached project estimates. (See attachment "A"). Work includes but is not limited to clearing and grubbing right of way, reconstructing roadway subgrade and laying asphalt concrete pavement, reshaping ditch lines, traffic control and permanent striping of centerline and edge line.
    - iii. Provide in-kind the estimated costs of equipment and personnel.
    - iv. Provide joint oversight and inspection of the project.
  
  - B. **MUNICIPALITY SHALL:**
    - i. Reimburse the County for 100% of all material costs incurred in reconstruction of this section of Bedford Drive, between Kingsbury Lane and Drury Lane as reflected in Attachment "A."
    - ii. Upon completion of the project and upon proper invoicing by County, the Municipality shall make payment within 30 days.
    - iii. In no case will the Municipality's cost to complete this project exceed **Eighty-Three Thousand, Four Hundred Seventy-Four Dollars and Sixty Cents (\$83,474.60)** provided, the work is completed within the duration of the current County "Highway Materials and Supplies" contract ending December 31, 2024. The not to exceed cost will be adjusted to reflect increases and decreases in costs paid by the County for contract items used to complete this project during future contract periods without approval, regardless of cause.
    - iv. The Municipality agrees that upon completion of said project and opening of the same to traffic, the Municipality will be responsible for all needed maintenance and repairs to keep the project in good and safe condition for the use and benefit of the traveling public.
  
3. **AUTHORIZED ADMINISTRATOR(S):** For purposes of administering this agreement, The Comptroller of County's District No. 2, the Superintendent of County's District No. 2, and the Mayor of the City of Nichols Hills shall be responsible for administering this Agreement. Also, it is expressly understood that County shall have no right, claim, or title to any real or personal property used in this project, other than that already owned by County.
  
4. **RIGHTS OF WAY:** Municipality represents and warrants to County that Municipality owns, leases, or holds beneficial easements on any and all real property involved in the project and work to be performed by County. In the event that any person or entity attempts to hold County liable for work done on the property subject to this specific agreement, the Municipality agrees

to defend and indemnify County against any loss related to such defense, including attorney fees and costs.

5. **COMMENCEMENT OF AGREEMENT:** This Agreement shall commence on the date on which the Agreement is executed in writing by all parties and will continue through the completion of the project, or until the end of the current fiscal year. The parties agree that they remain bound by the terms of the original General Mutual Cooperation Agreement executed on the 1<sup>st</sup> day of July, 2024.
6. **COMMENCEMENT OF PROJECT:** The project shall commence after the agreement has been fully executed and based on the availability of the County's equipment, materials, personnel, etc.
7. **FISCAL YEAR LIMITATION:** The parties agree and understand that in the event that the project outlined in this Agreement is not completed during the fiscal year in which it was executed, Municipality must submit payment for any work completed during the fiscal year, and if funds or materials are required to be encumbered for the succeeding fiscal year in order to complete the project, that the parties must enter into another written Agreement.
8. **INDEMNIFICATION:** Other than the defend and indemnify provisions outlined in paragraph #4 "Rights of Way", the parties further agree and covenant that in exchange for the considerations set out herein that each party shall only be liable for their own negligence, acts or omissions, or the negligence, acts or omissions of their respective employees, nor shall any party be required to indemnify another party for the same. The parties understand and agree that this Agreement in no way relieves the Municipality of its primary statutory duties to maintain said road(s) in a reasonably safe condition for travel by the public, including for the duration of the above-described project agreement.
9. **REVISIONS AND AMENDMENTS:** The parties agree that the terms of this Agreement may not be revised or amended in any form or fashion without obtaining a fully executed written revision or written amendment from the parties.
10. **ASSIGNMENT:** The rights and duties under this Agreement are not assignable except upon prior written consent of the parties hereto.
11. **THIRD PARTY BENEFICIARIES:** No third-party beneficiaries are created by this Agreement and that is the express intent of the parties hereto.
12. **COMPLETE AGREEMENT:** The parties acknowledge and agree that this Agreement sets out the complete and total agreement between the parties.
13. **VENUE:** In the event of litigation regarding any aspect of this Agreement, the parties agree that venue shall lie in the District Court of Oklahoma County.
14. **CAPTIONS:** The captions, titled, and headings contained herein are for convenience only and shall not control the interpretation of any provision.

15. **INTERPRETATION:** Any word used herein in the singular shall also include the plural, and vice versa, except where a contrary intention plainly appears. The masculine shall also include the feminine and vice versa.
16. **PRESERVATION OF RIGHTS:** Neither party waives any defenses or rights available to them under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., common law, pertinent statutes, and constitutions.
17. **WHOLE AGREEMENT:** This Agreement, which includes Attachment “A”, constitutes the entire agreement, covenants and provisions agreed upon by the parties, and no agent or administrator to this agreement has authority to alter or change the terms hereof, except as provided herein, and except as provided in the original General Mutual Cooperation Agreement. No party shall be bound by any statement or representation not in conformity with this written agreement.
18. **TERMINATION OF AGREEMENT:** Prior to commencement of the project, either party may terminate this Agreement by giving seven (7) days written notice to the administrator for the other party. After the commencement of the project, either party may terminate this agreement, with or without cause, by giving written notice of such termination to the administrator of the other party. In the event work has already begun by County, Municipality shall reimburse the County for any work already performed. Otherwise, this Agreement shall terminate automatically upon completion of the project and upon receipt of the final payment of expenses by the municipality.

**CITY OF NICHOLS HILLS**

*Approved by the CITY OF \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024.*

**ATTEST:**

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor

**APPROVED** as to form and content this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Counsel for Municipality



**BOARD OF COUNTY COMMISSIONERS OKLAHOMA COUNTY**

APPROVED by the Board of County Commissioners this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BOARD OF COUNTY COMMISSIONERS  
OF OKLAHOMA COUNTY, OKLAHOMA**

By \_\_\_\_\_  
Brian Maughan, Chairman

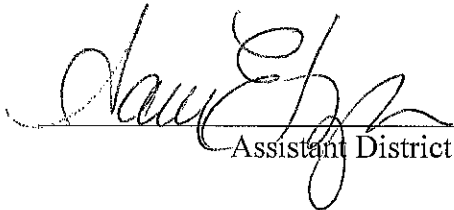
By \_\_\_\_\_  
Carrie Blumert, Member

By \_\_\_\_\_  
Myles Davidson, Member

**ATTEST:**

\_\_\_\_\_  
County Clerk

**APPROVED** as to form and legality this 24 day of Sept, 2024.

  
\_\_\_\_\_  
Assistant District Attorney