



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 5/14/2024

**REQUESTER:** Paul D'Andrea, Capital Projects Engineer

**PRESENTER:** Scott Sturtz, Interim Public Works Director

**ITEM TITLE:** CONSIDERATION OF ACCEPTANCE, APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF REQUEST FOR AUTHORIZATION FOR PARTIAL RELEASE OF RETAINAGE, FROM 5% TO 2.5%, FOR CONTRACT K-2223-33 BETWEEN THE CITY OF NORMAN AND L5 CONSTRUCTION, LLC, FOR THE NORTH BASE COMPLEX PHASE 2 VEHICLE WASH FACILITY PROJECT.

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### **BACKGROUND:**

**Parks Maintenance Facility:** On October 13, 2015, the citizens of Norman voted to fund the Norman Forward Program with a limited term ½ percent sales tax increase for 15 years. This initiative included a number of high-priority projects outlined in the 2014 Library Master Plan Update, the 2009 Norman Parks and Recreation Master Plan and additional projects designed to provide recreational opportunities for Norman residents. One such project was the construction of the Griffin Park Sports Complex.

The Norman Forward Program includes a Maintenance Facility for the City of Norman Parks and Recreation Department. This facility was originally to be relocated from Reaves Park to Griffin Park; however, the City subsequently changed the plans to construct a new Parks and City Transit/Public Safety Maintenance Facility adjacent to the City's current Fleet Maintenance Facility at the North Base Complex, located at 1301 Da Vinci Street near the Norman Municipal Airport. The proposed multi-departmental facility provides maintenance for City Parks and Recreation vehicles and equipment, City Transit System buses, and Public Safety vehicles and equipment.

**North Base Complex Design:** On March 14, 2017, the Norman City Council approved Contract K-1617-114 between the City of Norman and PDG, LLC d.b.a. Planning Design Group, in the amount of \$761,000 for Professional Architectural Design Services for the Griffin Park Sports Complex.

Because PDG, LLC was performing the professional architectural design services for the Griffin Park Sports Complex, City staff recommended amending their contract to include design of the new Parks Maintenance Facility. These services were over and above those included in contract K-1617-114. Due to the desire to co-locate the Parks, City Transit and Public Safety

Maintenance Facilities at the North Base Campus, staff further recommended including master planning and design of the City Transit and Public Safety Maintenance Facilities in the amended contract.

On August 27, 2019, the Norman City Council approved Amendment 1 to Contract K-1617-114 between the City of Norman and PDG, LLC d.b.a. Planning Design Group, in the amount of \$430,280 for additional Professional Architectural Design Services to add the City Park Maintenance Facility and Transit/Public Safety Maintenance Facility to the existing contract for the Griffin Park Sports Complex.

On April 14, 2020, the Norman City Council approved Amendment 3 to Contract K-1617-114 between the City of Norman and PDG, LLC d.b.a. Planning Design Group, in the amount of \$316,370 for additional Professional Architectural Design Services to provide for an increased project scope and to add bidding services and construction administration services for the City Park Maintenance Facility and Transit/Public Safety Maintenance Facility to the existing contract for the Griffin Park Sports Complex.

On September 8, 2020, the Norman City Council approved Amendment 5 to Contract K-1617-114 between the City of Norman and PDG, LLC d.b.a. Planning Design Group, in the amount of \$49,500 for additional architectural design services for the proposed City Parks and Transit/Public Safety Maintenance Facility to include proposed building and parking revisions, project phasing, renderings, and inclusion of federal third party contracting requirements needed for FTA Grant funding.

On September 8, 2020, the Norman City Council approved Amendment 4 to Contract K-1516-110 between the City of Norman, Oklahoma, The Norman Municipal Authority, and ADG, P.C., in the amount of \$157,180 adding Construction Phase Services for the North Base Complex, Phase 1 Project to the scope of projects receiving program management services.

On October 13, 2020, the Norman City Council awarded Contract K-2021-35 between the City of Norman, Oklahoma, and Flintco LLC, in the amount of \$8,648,000, for the construction of the City Park Maintenance Facility and the Transit/Public Safety Maintenance Facility.

On March 9, 2021, the Norman City Council approved Change Order 1 to Contract K-2021-35 between the City of Norman, Oklahoma, and Flintco LLC, in the amount of \$64,737.65 and 20 Calendar Days, for the construction of the City Park Maintenance Facility and the Transit/Public Safety Maintenance Facility.

On May 25, 2021, the Norman City Council approved Amendment 6 to Contract K-1617-114 with PDG, LLC d.b.a. Planning Design Group, in the amount of \$40,000, for design services to add an additional manual wash bay to the North Base Phase 2 Vehicle Wash Facility.

On July 13, 2021, the Norman City Council approved Change Order 2 to Contract K-2021-35 between the City of Norman, Oklahoma, and Flintco LLC, in the amount of \$76,156.98 and 39 Calendar Days, for the construction of the City Park Maintenance Facility and the Transit/Public Safety Maintenance Facility.

On October 12, 2021, the Norman City Council approved Change Order 3 to Contract K-2021-35 between the City of Norman, Oklahoma, and Flintco LLC, in the amount of \$102,609.21 and

58 Calendar Days, for the construction of the City Park Maintenance Facility and the Transit/Public Safety Maintenance Facility.

On January 25, 2022, the Norman City Council approved Change Order 4 to Contract K-2021-35 between the City of Norman, Oklahoma, and Flintco LLC, in the amount of \$93,249.12 and 41 Calendar Days, for the construction of the City Park Maintenance Facility and the Transit/Public Safety Maintenance Facility.

On January 22, 2022 City staff issued substantial completion for the City Park Maintenance Facility and the Transit/Public Safety Maintenance Facility. Upon issuance of substantial completion, the City moved all Transit/Public Safety Maintenance operations into the new facilities, and out of the University of Oklahoma facilities. Parks Maintenance staff is awaiting completion of some critical final punch list items before moving into the new Parks Maintenance Facility to help facilitate efficient completion of the work.

On February 8, 2022, the Norman City Council approved appropriation of funds, in the amount of \$1,800,000 for the construction of the North Base Complex Phase 2 Project, which will provide a vehicle wash facility at the North Base Complex capable of serving all city fleet vehicles and transit busses.

On June 2, 2022, The City of Norman opened bids for the North Base Phase 2 Vehicle Wash Facility project. The low bid, from L5 Construction, was \$2,688,000. This was nearly \$900,000 over the project budget. Consequently, the bids were rejected.

On November 8, 2022, after rebidding the project, the Norman City Council awarded Contract K-2223-33, with L5 Construction, LLC, in the amount of 2,185,500, for construction of the North Base Phase 2 Vehicle Wash Facility project.

On June 27, 2023 the Norman City Council approved Change Order 1 to construction contract K-2223-33 with L5 Construction, LLC, in the amount of \$97,648 to cover costs for construction items added and changed in the plans after bidding.

## **DISCUSSION:**

The North Base Phase 2 Vehicle Wash Facility was ready for final inspections and testing in January, 2024. However, upon startup and inspection, several issues were found that have required either design changes to pass inspection, or revisions to the wash system to resolve operational issues. As a result the project final acceptance has been delayed, while the issues are being investigated and the contractor is working with the design team to deliver solutions. These issues constitute items representing less than 2% of the total contract price.

Due to the delay in final acceptance, the contractor has requested that the retainage for the project be reduced from 5% to 2.5% to facilitate payment of sub-contractors for work that is complete and is unrelated to the issues causing the delay in closeout.

Effective November 1, 2022, the Competitive Bidding Act, provides for the reduction of retainage from 5% to 2.5% once the project has reached 50% completion and the owner has determined that satisfactory progress is being made (see 61 O.S. § 226). The contract for this project was prepared prior to this change in the act but not executed until after the change had taken effect, and the contract language does not mirror the applicable statutory language. City Staff now

submits this verification of satisfactory progress and seeks authorization to reduce retainage in accordance with the Act. City staff has verified that more than 50% of the total project work is complete. Further, City staff believes the work is progressing enough to meet the “satisfactory progress” requirement, and that a reduction in retainage (from 5% to 2.5%) for the North Base Phase 2 Vehicle Wash Facility project, as requested, is appropriate at this time.

If approved, the current retainage held would be reduced from \$114,157.40 to \$57,078.70, necessitating a payment to L5 in the amount of \$57,078.70 in accordance with the statute. The date of substantial completion is not yet known due to the current delay; however, retention of the remaining 2.5% of the total contract price will be withheld throughout the remainder of the contract, through substantial completion and until City staff confirms all final punch list items are complete. Upon said completion, release of the final retainage will accompany a future Council agenda item for final acceptance of the project and final payment to L5.

These retainage funds are being held in the North Base Vehicle Wash project, Construction (Account 505900778-46101; Project BG0260).

**RECOMMENDATION:**

Staff recommends the following:

Reduction of retainage for Contract K-2223-33, with L5 Construction, LLC, for the North Base Complex Phase 2 Vehicle Wash Facility project, from 5% to 2.5% of the total contract amount.