



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 02/22/2022

**REQUESTER:** Elisabeth Muckala, Asst. City Attorney

**PRESENTER:** Elisabeth Muckala, Asst. City Attorney

**ITEM TITLE:** CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2122-96: A REIMBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF NORMAN, A MUNICIPAL CORPORATION, AND WESTERN FARMERS ELECTRIC COOPERATIVE IN THE AMOUNT OF \$446,469.13, AND PROVIDING FOR THE SHARING OF COSTS FOR TRANSMISSION LINE RELOCATION OCCASIONED BY THE 36<sup>TH</sup> AVENUE BOND PROJECT AND BUDGET TRANSFER AS OUTLINED IN THE STAFF REPORT.

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### **BACKGROUND:**

On August 28, 2012, the citizens of Norman voted in favor of a General Obligation Bond Issue to finance the local share of eight transportation/stormwater improvement projects. One of the eight 2012 bond projects is the 36th Avenue NW Widening Bond Project between Tecumseh Road and Indian Hills Road.

On November 22, 2011, the Norman City Council approved Programming Resolution R-1112- 64, requesting federal funds for the 36th Avenue NW Bond Project. This resolution states the City's commitment to adhere to the terms and conditions of a federally-funded project including engineering design, acquisition of all necessary rights-of-way and relocation of utilities and encroachments at 100% the City's cost. In return, the Association of Central Oklahoma Governments (ACOG), through the Oklahoma Department of Transportation (ODOT), agrees to provide 80% of the construction cost, estimated at \$11,500,000, and administration of the construction with the matching share from the City of Norman.

On April 9, 2013, City Council approved engineering services Contract K-1213-170 with the engineering firm of CP&Y in the amount of \$703,878.50 to design 36th Avenue NW Bond project from Tecumseh Road to Indian Hills Road.

On August 14, 2018, City Council approved Resolution R-1819-12 declaring the 36th Avenue NW Project a recoupment project.

Proposed improvements for the 36th Avenue NW Bond Project include:

1. Widen two miles of roadway from two lanes to four lanes
2. New traffic signals at 36th Avenue NW and Franklin Road and 36th Avenue NW and Indian Hills Road
3. Interconnect signals between Tecumseh Road and Indian Hills Road
4. Dedicated left turn lanes at All Saints Catholic School
5. Fifth lane north of Indian Hills Road to Market Place
6. Storm water improvements
7. Continuous sidewalks along both sides of the roadway with the 10-foot-wide Legacy Trail from Tecumseh Road to Franklin Road on the east side
8. Bicycling facilities as listed in the Norman Bike Plan

On February 26, 2019, City Council approved Authorization for Expenditure No. One from Contract K-1314-102 with Smith-Roberts Land Services, Inc., for the 36th Avenue NW Bond Project - Phase 1, in the amount of \$54,324 for right-of-way acquisition services. On May 28, 2019, City Council approved Amendment One to Contract K-1213-170 for engineering design of the 36th Avenue NW Widening Bond Project from Tecumseh Road to Market Place, with CP&Y, Inc., in the amount of \$193,895.

On August 13, 2019, City Council approved Authorization for Expenditure Three under contract K-1314-102 with Smith-Roberts Land Services, Inc., for right of way acquisition services for Phase Two of the 36th Avenue Northwest Widening Bond Project, from Franklin Road to Market Place, in the amount of \$130,116.

On November 12, 2019, City Council approved Authorization for Expenditure Four, under Contract K-1314-102, with Smith-Roberts Land Services, Inc., in the amount of \$20,180 for additional right-of-way acquisition services due to an increase in the number of parcels and appraisals included in Phase Two of the 36th Avenue Northwest Widening Bond Project.

Necessary parcels for the project have been acquired, some through eminent domain actions that have been completed in the District Court for Cleveland County, Oklahoma.

## **DISCUSSION:**

This proposed Agreement concerns Western Farmers Electrical Cooperative (WFEC) existing utility lines within Phase One of the project (between Tecumseh Road and through the Franklin Road Intersection), which require relocation in order to accommodate the project. A map of the area affected by the relocation is depicted within Appendix A of the Agreement. The City would ordinarily be responsible for some costs relating to utility relocation within private easements occasioned by a project; however certain WFEC infrastructure was mistakenly located by WFEC (or its contractors) within existing City statutory right-of-way. Thus, the parties have endeavored to reach an amicable resolution of each party's share of relocation cost.

WFEC initiated the relocation process last year by bidding for the manufacture of certain large utility poles and required anchor bolts. Due to current market conditions, the manufacture of these items had a significant lead time and the contractor was only able to guarantee product cost for a short period of time. As a result, the parties entered into Contract K-2021-126 in May of 2021, a Memorandum of Understanding setting forth an agreement for the procurement of

these poles and an initial pay-share agreement regarding the same.

WFEC has completed bidding with respect to the remaining project components and the parties now have a final estimate of project costs, including the City's reimbursable cost share. The project is currently estimated at \$864,251.23, with the City's share costing \$446,469.13 (51.7%) and WFEC's share costing \$417,782.10 (48.3%). These amounts are inclusive of the amounts set forth in the previous MOU, Contract K-2021-126; therefore, that agreement will be fully superseded and replaced by Contract K-2122-96 upon its approval by City Council.

The current Agreement provides a final resolution of the parties' positions regarding responsibility for this relocation, whereby the City is responsible for this share of the bid project, and may be subject to additional actual costs on its pro-rata share once the project has finally concluded and the final project cost is known. The Agreement provides for WFEC's completion of the relocation and permits WFEC access to necessary City rights-of-way and easements for associated maintenance.

Finally, the Agreement provides mechanisms for disputes of invoiced charges, as well as a procedure for WFEC to account for any additional, and currently unforeseen, costs due from the City. This Agreement also provides for mutual releases by both parties for future potential legal responsibility.

On February 16, 2022, the Executive Board for WFEC considered K-2122-126 and approved its terms, subject to the City's subsequent approval of the same terms. Upon approval by the City, the parties will exchange final signatures so that the relocation may get immediately underway.

Funds are available in the 36<sup>th</sup> NW: Tecumseh-Indian Hills project (BP0197) but will need to be transferred from the Construction Account (50595552-46101) to the Utility Account (50595552-46701) to cover the cost of the City's share of the utility relocations.

#### **RECOMMENDATION NO. 1:**

Staff believes the costs proposed are reasonable and represent a fair and equitable allocation of responsibility for the subject relocation by WFEC. City staff thus recommends that the above-described Contract K-2122-126 be approved for execution by the Mayor, and that City Staff be authorized to proceed with payments for its responsibility of the relocation project, as set forth in the contract.

#### **RECOMMENDATION NO. 2:**

Transfer of budget funds between phases within the 36<sup>th</sup> Avenue NW: Tecumseh-Indian Hills project from Construction Account (50595552-46101, BP0197) to the Utility Account (50595552-46701, BP0197) in the amount of \$446,469.13.