



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 6/13/2023

REQUESTER: Tim Miles, Capital Projects Manager

PRESENTER: Beth Muckala, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-144: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING THE ACQUISITION CERTAIN REAL PROPERTY, MORE PARTICULARLY HEREINAFTER DESCRIBED, ALL WITHIN THE CITY OF NORMAN, COUNTY OF CLEVELAND, STATE OF OKLAHOMA, FOR THE PURPOSE OF THE JENKINS AVENUE 2019 BOND PROJECT IN THE CITY OF NORMAN; AND DECLARING THE NECESSITY FOR ACQUIRING SAID PROPERTY FOR ROADWAY, UTILITY AND DRAINAGE PURPOSES, AND AUTHORIZING INITIATION OF EMINENT DOMAIN PROCEEDINGS FOR THAT PURPOSE.

BACKGROUND:

On April 2, 2019, the citizens of Norman voted in favor of a \$72 million transportation bond issue, which includes nineteen (19) projects. With the anticipated \$67 million in federal dollars being leveraged for these projects, approximately \$139 million is budgeted for the nineteen (19) projects (please see the attached project list and map showing the approved projects).

On August 19, 2019, City staff advertised Request for Proposal RFP 1920-16 to solicit Consulting Engineering Services for the fourteen (14) bond projects still requiring design. The selection committee consisting of three (3) City staff and two (2) citizens selected nine (9) consultant teams for interviews held on October 2, 2019. The five (5) consultant teams selected after interviews to complete the design on these projects are:

- Garver, Norman
- Cowan Group, Oklahoma City
- Freese and Nichols, Oklahoma City
- MacArthur Associated Consultants, Oklahoma City
- Olsson Associates, Oklahoma City

These consultants are being assigned the various projects by City staff based on capacity, performance on their current projects and capabilities of their firm to complete a specific project.

On November 26, 2019, City Council awarded the Jenkins Avenue Widening Project to Freese and Nichols of Oklahoma City in the amount of \$827,005.

On September 8, 2020, the Norman City Council approved Programming Resolution R-2021-46 requesting federal funds for the Jenkins Avenue Widening 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, up to a project maximum of \$7,500,000 in federal funds, and administration of the construction with the matching share from the City of Norman.

On January 24, 2023, City Council approved Contract K-2223-88, a Project Agreement with ODOT for the Jenkins Avenue Widening Project.

On May 23, 2023, City Council accepted Easements E-2223-33 through E-2223-36 for the Jenkins Avenue Widening Project.

On June 14, 2022, City Council approved the on-call right-of-way acquisition services contract for the Jenkins Avenue Widening Project to Pinnacle Consulting Group, Inc. (Pinnacle) of Oklahoma City in the amount of \$74,500. Appraisals were obtained from an Oklahoma Department of Transportation (ODOT) certified appraiser, and offers made on each parcel for the easements sought. In addition to paying land owners for the acquired property, they are paid for any damages including fence replacement, tree replacement, and other items located within the acquired easement that may be affected or need to be replaced or relocated. After the easements values are determined, the acquisition agent meets with the landowner to discuss the purchase of the easement(s).

If the landowner agrees to the terms, then the documents are signed and the landowner is compensated for the easement, including any damages, upon City Council approval. If an agreement cannot be reached on fair value, the land may be acquired through a process called eminent domain, which allows a government to acquire private property for public use with fair compensation. In this process, a third party establishes an independent fair market value of the property being acquired, which becomes the purchase price of the property regardless of whether it is more or less than the original appraised value.

The City is currently involved in ongoing discussions with the University of Oklahoma, a public entity, regarding the thirty (30) easements required to construct the project. Thus, the City otherwise only requires easements from the owners of five (5) remaining privately-owned parcels.

DISCUSSION:

Notice of Intent letters were sent to these five (5) private owners in October of 2022 regarding the project, and formal offer letters for acquisition of the needed easements and right-of-way were sent in March of 2023. The offers were based on value obtained from the ODOT-certified appraisers. Review appraisals are also performed where required, ensuring that the provisions of the Fifth Amendment of the United States Constitution and the Constitution of the State of Oklahoma are met. The Fifth Amendment provides in part: "...nor shall private property be taken

for public use without just compensation.” Further, the Constitution of the State of Oklahoma provides: “Private property shall not be taken or damages for public use without just compensation. Just compensation means the value of the property taken ...”.

Finally, 11 O.S. § 22-104 provides that “every municipality shall have a right to: (3) exercise the right of eminent domain for any municipal purpose ...”

Section 22-105 of Title 11 provides:

Private property may be taken for public use, or for the purpose of giving a right-of-way or other privilege for any necessary purpose, in the manner provided by law; but in every case the municipality shall make adequate compensation to the person or persons whose property shall be taken or injured thereby as provided by law.

The appraisal process ensures the offer to the property owner is adequate. The Courts have viewed “just compensation” as “[t]he fair market value, which means the money which purchaser willing but not obligated to buy property would pay to the owner willing but not obligated to sell it.” *Grand River Dam Auth. v. Bonford*, 111 P.2d 182 (Okla. 1941).

The City of Norman, directly and/or through its right-of-way agents, has been working with the property owners’ agents to address any concerns they might have regarding the acquisitions. However, the City and its agents have not yet been able to complete acquisitions with respect to five parcels: Parcels 11 and 14 through 17.

Regarding Parcel 11, the City requires 589 square feet of new permanent right-of-way, 9 square feet of new utility easement, a temporary construction easement, and two temporary driveway easements (to replace existing driveway approaches affected by the project). The City’s offer was rejected and though numerous discussions have taken place, the owner and the City have not been able to come to a conclusion over value and appear to be at an impasse.

Regarding Parcels 14 and 15, the City’s offers were rejected. For parcel 14, offers were made for 140 square feet of permanent easement, 9 feet of utility easement, a temporary construction easement and two temporary driveway easements. For Parcel 15, no permanent easements are sought, only a temporary construction easement and temporary driveway easement. Discussions have continued and though a resolution has not yet been reached, the City is continuing conversations in the hopes that an amicable resolution may be reached without the need to proceed very far into the formal eminent domain process. Upon conclusion of negotiations for Parcels 14 and 15, the City anticipates being able to conclude its negotiations with the owner of Parcels 16 and 17. For Parcels 16 and 17, a 9 feet of utility easement, a temporary construction easement, and a temporary driveway easement are sought from each parcel.

Staff believes that pursuing eminent domain may serve to avoid significant cost increases and avoid devaluing funds already invested in this project. Although Staff desires to settle the acquisition process with the property owners, it is necessary to take the next step to file for eminent domain to have this project ready for the next available Federal funding opportunity. Filing an eminent domain action does not mean that efforts toward settlement will cease. It will ensure, rather, that the property is acquired in a timely fashion. A companion to this item is R-

2223-143, which declares a recoupment for this project, including these parcels and one other privately-owned parcel that are unplatted to date.

RECOMMENDATION:

Based upon the above and foregoing, it is the recommendation of Staff that proposed Resolution R-2223-144, concerning the necessity of acquiring the previously described tract(s) of property located on Jenkins Avenue, and authorizing the filing of eminent proceedings for the acquisition thereof, be approved.