



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 03/26/2024

REQUESTER: Scott Sturtz, Interim Director

PRESENTER: Elisabeth Muckala, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2324-167 AND CONVEYANCES E-2324-139, E-2324-140, E-2324-141 AND E-2324-142: AN ACQUISITION AND SETTLEMENT AGREEMENT, AND RELATED EASEMENT CONVEYANCES AND RELEASE, RESOLVING CITY OF NORMAN V. UPLANDS DEVELOPMENT CO., L.L.C., CLEVELAND COUNTY DISTRICT COURT CASE CJ-2021-227, AND ALLOWING ENTRY OF JUDGMENT IN THE TOTAL AMOUNT OF \$199,771.31 IN FAVOR OF DEFENDANT UPLANDS.

BACKGROUND:

This case was filed by the City of Norman against Uplands Development Co., L.L.C. on March 9, 2021 as an eminent domain action after attempts to amicably purchase easements necessary to the 36th Ave. Bond Project, Phase II, failed. On July 22, 2021, the Commissioners awarded Uplands \$185,000 in just compensation and those funds were previously delivered to the Court in accordance with state law in order to allow the Project to proceed. The City deposited these funds with the Court Clerk and proceeded with its project. The funds were later disbursed to Uplands.

Uplands, through legal counsel, filed a demand for jury trial protesting the award amount, which dispute survives the disbursement of funds as a matter of law. Following much discovery and case preparation, including expert preparation, the parties participated in court-ordered mediation. Through mediation, the parties found common ground for a creative resolution of the disputes over value involved in this case. Based on a mediator's proposal resulting from this mediation, the parties continued their Status Conference until April 1, 2024 in order to allow the parties time to pursue and finalize an amicable resolution of the claims in this case.

DISCUSSION:

As set forth in the mediator's proposal, Uplands is willing to resolve this case for just compensation based upon a value of \$16.12 per square foot. Based on this amount, Uplands will be compensated for exactly one-half of the acquired total square footage (totaling 20,473.2 SF), for a total amount of just compensation of \$330,027.98. The remaining one-half of the acquired property will be voluntarily donated by Uplands, as set forth in the Agreement. After

deducting the amount paid into court, the amount of just compensation remaining due is \$145,027.98. Additionally, due to the amount of the Commissioner's Award, the City is ultimately responsible for fees and costs in the total amount of \$54,743.33, which amounts are also included in this settlement, for a total settlement amount of \$199,771.31.

This agreement provides further terms regarding the City's treatment of the acquired property for the purposes of recoupment, as well as a method for conveyance of the particular easements acquired and the release to be filed of the July 2021 Commissioners' Report. Because of the filings needed to accomplish this settlement, the agreement shall proceed for approvals through the filed court case. Once this Agreement, with all referenced attachments, are approved by the parties, the Agreed Journal Entry attached as Exhibit C to the Agreement will be presented to the Court for approval. Upon approval, the Easements and exhibits attached as Exhibits B, D and E to the Agreement, as well as the Release attached as Exhibit F, shall be filed of record with the Cleveland County Clerk's Office, in order to effectuate final conveyance of the acquired property. Thus, these two permanent easements, one temporary driveway easement and the release are presented to the City Council for acceptance along with the Agreement, with approval conditioned upon the Court's approval of the Parties' Agreed Journal Entry of Judgement.

Upon approval of the Agreed Journal Entry of Judgment by the Court, the total settlement amount of \$199,771.31 is planned to be reduced to a judgement in favor of Uplands.

RECOMMENDATION:

City Staff has evaluated the proposed settlement and believes it is a good and creative resolution of the parties' dispute in light of the case status and situation, and that approval is in the best interests of the City. It is recommended that Contract K-2324-167 in the amount of \$199,771.31 be approved and that Easements E-2324-139, E-2324-140, E-2324-141, and the Release, E-2324-142, be approved conditioned upon the Court's approval of the Parties' Agreed Journal Entry of Judgment.

City Staff further recommends that this office be directed to reduce the settlement amount to judgment in accordance with 51 O.S. § 159 and 62 O.S. § 362. The settlement amount will then be placed on the property tax rolls for collection over the next three years. Under this process, one-third of the judgment amount plus interest at the statutory rate on the unpaid balance is collected through property tax roll assessments over that time period. The statutorily allowed procedure for payment of judgment against a municipality will minimize the impact of the settlement on City funds.