



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 03/26/2024

REQUESTER: Scott Sturtz, Interim Director of Public Works

PRESENTER: Elisabeth Muckala, Asst. City Attorney

ITEM TITLE: CONSIDERATION OF ACCEPTANCE, APPROVAL, REJECTION, AMENDMENT AND/OR POSTPONEMENT TO AMENDMENT TWO TO CONTRACT K-1617-137 AND MEMORANDUM OF UNDERSTANDING: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, THE NORMAN MUNICIPAL AUTHORITY, SUMMIT LAKES PROPERTY OWNERS ASSOCIATION, SUMMIT LAKE VILLAS PROPERTY OWNERS ASSOCIATION, AND SUMMIT LAKES, L.L.C., FOR THE MISTY LAKE DAM REPAIR PROJECT, TO ALLOW THE CITY TO SUBMIT AN APPLICATION FOR HIGH HAZARD POTENTIAL DAM GRANT FUNDS, ADDRESSING OWNERSHIP TRANSFERS, FUND HANDLING AND OTHER MATTERS AS SET FORTH THEREIN.

BACKGROUND:

The Summit Lakes Addition and the Summit Lake Villas Addition are located between 24th Avenue SE and 36th Avenue SE on Alameda Street. At the time of contract adoption, the Summit Lakes Addition was platted into ten different sections comprising 542 lots and the Summit Villas Addition is platted into 66 lots. The Summit Lakes Addition also originally included a proposed Section 11 that would contain 69 lots that has since final platted to include 66 lots.

There are seven lakes within the Additions that function as a storm water drainage system: Misty Lake, Heron Lake, Drake Lake, Hidden Lake, Willow Lake, StarCrest Lake, and Secret Lake. All of these improvements and amenities are currently owned, managed, maintained, and controlled by one or both of the Summit Lakes Property Owners Association and the Summit Villas Property Owners Association. On March 16, 2011, the Summit Lakes Property Owners Association was notified by the Oklahoma Water Resource Board (OWRB) that the dam associated with Misty Lake was being reclassified as a “high hazard” dam due to the potential downstream impacts on Alameda Street and nearby homes in event of a failure of the dam. On March 20, 2015, the Oklahoma Water Resource Board (OWRB) issued an emergency order and set an administrative hearing on April 14, 2015 due to the dangerous condition of the dam. Subsequent to the hearing, the OWRB issued a Consent Order on July 8, 2015 requiring the Summit Lakes Property Owners Association to lower the lake level three feet below the emergency spillway and maintain that level until the dam was repaired. The Consent Order also required the Summit Lakes Property Owners Association to prepare and submit engineering plans and to make

repairs as specified in the engineering plans. The engineering plans were completed and the cost of necessary repairs was estimated to be within the range of \$ 595,000 to \$700,000.

Due to the significant cost of the necessary repairs, the two Property Owners Associations were unable to fund the repairs. They reached out to the Developer of the Additions, Summit Lakes, LLC, and the City of Norman for assistance. At that time, the parties began discussing options to resolve the issue. City Council met on this topic in a Study Session on December 6, 2016 and in Executive Session on January 24, 2017, May 9, 2017, and June 13, 2017. The parties ultimately came to an agreement on a proposed Participation Agreement for the Misty Lake Dam Repair Project, adopted in June 2017. The Summit Lakes Property Owners Association and the Summit Villas Property Owners Association ultimately offered to participate through a pro rata lot assessment assuming such an assessment is approved by the members of the respective property owners associations . Per the original contract terms, the Developer, Summit Lakes LLC, offered to contribute a cash payment toward the repair project as well as agreeing to assess the future Section 11 lots at the same rate as the lots assessed by the POAs.

The City of Norman Stormwater Master Plan recommends public and private participation in order to assure that necessary maintenance to key stormwater infrastructure occurs, especially in cases where property owners associations are unable to perform such functions. The City is also responsible for both of the two other high hazard dams located in the City of Norman by virtue of ownership (Hall Park Dam) or lease obligation (Sutton Lake Dam). Repair and maintenance of the Misty Lake Dam is important to adequately address storm water retention and runoff concerns that could impact citizens of Norman who live in either of the Summit Lakes Additions as well as other citizens of Norman who may be impacted by a failure of the Misty Lake Dam and effects on surrounding infrastructure improvements. For these reasons, under the terms of the Agreement, the City agreed to accept permanent ownership and maintenance of the Misty Lake Dam following completion of the repair project. In addition, the City agreed to assist in collection of assessment to property owners through the regular utility billing processes and remit the same to the lender financing the repairs. This collection process is similar to an Agreement approved by Council earlier in 2017 for the Cedar Lakes subdivision that was also having a dam safety issue.

Engineering plans have been completed by Cardinal Engineering, now Parkhill, detailing the scope of the required repairs. In accordance with the original adopted agreement, once the necessary engineering documents are completed and the estimated amount of funds are delivered to the City, the City was to administer construction of the dam repairs as a public construction project through the Oklahoma Competitive Bidding Act. The successful bidder will be required to submit bonds covering the repairs. The City will also provide construction oversight at the City's cost. Additionally, the original agreement provided that the City would not let the improvement project for a competitive bidding process until the POAs, in accordance with their covenants, approve the transfer of Misty Lake Dam to the City and approve the assessments for the repair costs in an amount not to exceed the amount of the revised engineering estimate less the Developer's contributions. As originally envisioned, the City would begin to collect the assessments through the City's utility billing process upon completion of construction and will charge an administrative fee of \$1 per month per lot. The POAs repayment terms were to be negotiated with a private lender. Since the adoption of the original agreement, the POAs have assessed their membership and are prepared to either directly fund or have secured loans for their share of the improvement cost.

Per the original agreement, if the bids exceed the engineer's estimate, the parties must agree on adjustments to the project scope that accomplish the dam repairs goals. If this is not feasible, the parties will attempt to agree on supplemental funding sources to allow the project to be constructed as originally designed. If supplemental funding cannot be agreed upon, the funds will be returned to the lender or contributing party as appropriate and the bid to construct the project will not be accepted. Additionally, the POAs were to transfer drainage and access easements relative to the common areas to the City of Norman without cost to the City. The drainage and access easements were to be for Misty Lake Dam maintenance and repair purposes and would not include a right of general public access to the dam for recreational purposes. The City was to use these easements to perform dam safety inspections; preparing annual reports to OWRB relative to the high hazard dam structure; and tree removal or other such repairs necessary to maintain the structural integrity of the dam as well as for completion of the initial repairs. However, the POAs were to retain all responsibility for mowing, sidewalks, litter control, and all other improvements that are not integral to the structure of the dam

The project has now been designed and is ready to bid. Because the financing arrangements have changed since the adoption of the agreement, and the Section 11 lots have not fully sold yet, the parties felt it necessary to amend this agreement on January 12, 2021 to better respond to the situation at that time. This Amendment No. One accomplished four principal purposes:

- 1) It changed the timing of payment to the City for the construction contract from prior to bidding to prior to contract award and required these funds to be held in a separate account for this purpose;
- 2) It set forth the Developer's agreement to deliver the funds for project costs attributable to the unsold Section 11 lots at the time all other construction funds are delivered to the City by the POAs;
- 3) It required the parties' to move forward with a Construction Manager at Risk ("CMAR") form contract, as municipalities are allowed to proceed under Oklahoma law and the Competitive Bidding Act; and
- 4) It provided a process whereby unforeseen cost overages would be identified, discussed and funded by the parties in the context of the CMaR contractual relationship.

Following the approval of Amendment No. One, Downey Construction was hired as a CMaR on the project, pursuant to Contract K-2122-67. Parkhill was also retained by the City to provide Construction Oversight services for the Project pursuant to Contract K-2122-68. On or about December 9, 2021, Downey's submitted a total construction budget in excess of \$1 million based upon bid responses combined with CMaR costs, which total cost well exceeded the Parties' budget. Since that time, the parties have been considering alternative options for proceeding, including the private parties' proposal to use the funds to privately complete the repairs.

DISCUSSION:

The parties have spent the last several months revising the parties' agreement to allow for this approach. However, the OWRB recently advised the parties of a grant opportunity, affording as much as a 65/35 split on federal/local funding, for projects involving remediation of High Hazard Potential Dams. The parties have opted to pursue such a grant opportunity for now, subject to

further agreement of the parties in the case that the project is either accepted or rejected for provision of funding.

The Amendment 2 and MOU incorporates the parties' agreement regarding provision of OWRB funding, transfer of fee ownership of the property subject to certain conditions and covenants, transfer of easements allowing for access and drainage, the POAs responsibility to perform a survey and lot line adjustment for the necessary property transfer, and allocation and use or return of funds in different scenarios. This Amendment 2 and MOU is expressly subject to the further agreement of the parties on various aspects, and retains the original agreements of the parties to the extent they are not set out in any amendment or supplement in this particular document.

The Amendment 2 and MOU should allow the City and NMA necessary permissions and authority to pursue the HHPD Grant opportunity on the POAs behalf, as well as establish a general framework for the Parties' future agreements.

A companion item to the Amendment 2 and MOU is Resolution R-2324-134, which authorizes the City Manager, Director of Public Works and/or their authorized representatives, to submit an application for the HHPD Grant to the OWRB for consideration of FYE24 funding.

RECOMMENDATION:

City Staff recommends approval of Amend 2 and MOU to K-1617-137 and R-2324-134, and direction that City Staff take future actions in accordance therewith.