



# CITY OF NORMAN, OK STAFF REPORT

---

**MEETING DATE:** 10/12/2021

**REQUESTER:** Brandon Brooks, Staff Engineer

**PRESENTER:** Shawn O'Leary, Director of Public Works

**TITLE:** CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF A CONTRACT K-2122-67 BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND DOWNEY CONTRACTING, L.L.C. FOR CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES IN THE AMOUNT OF \$10,000 PLUS A CONSTRUCTION MANAGEMENT FEE EQUAL TO 8 PERCENT OF COST OF CONSTRUCTION FOR THE MISTY LAKE DAM REPAIR AND BUDGET APPROPRIATION AS OUTLINED IN THE STAFF REPORT.

---

### **BACKGROUND:**

A Participation Agreement, as amended, currently exists between Summit Lakes, L.L.C. ("Developer"), Summit Lakes POA ("Summit Lakes"), and the Summit Lake Villas POA ("Villas") to perform certain engineering repairs to the Misty Lake Dam. The Summit Lakes and Villas Additions are located between 24<sup>th</sup> Avenue SE and 36<sup>th</sup> Avenue SE on Alameda Street. At the time City Council approved the Participation Agreement, 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 included a proposed Section 11 that would contain 69 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 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 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 will 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.

On January 1, 2021, City Council approved Amendment No. 1 to the original Participation Agreement, Contract K-1617-137 which did the following:

- 1) It changed the timing of payment to the City for the construction contract from prior to bidding to prior to contract award and requires 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 stated the parties' intentions 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 are identified, discussed and funded by the parties in the context of the CMaR contractual relationship.

As set out in the original agreement, the POAs will transfer drainage and access easements as necessary relative to the common areas to the City of Norman without cost to the City. Following completion of construction, the drainage and access easements shall be for Misty Lake Dam maintenance and repair purposes and will not include a right of general public access to the dam for recreational purposes. The City will 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 will retain all responsibility for mowing, sidewalks, litter control, and all other improvements that are not integral to the structure of the dam.

Since City Council's approval of the first amendment of the Participation Agreement, and on May 20, 2021, Staff requested and received a renewed approval letter from OWRB for the Construction/Modification of Summit Lake, High Hazard Dam design plans. This approval is valid for a period of two (2) years from the date of notification.

## **DISCUSSION:**

Per the parties' amended Participation Agreement, on July 2, 2021, Staff sent out Request for Qualifications (RFQ) 2122-11 to solicit proposals for a CMaR to provide services for the Summit Lakes Dam Repair Project. On July 29, 2021 Staff received one proposal from Downey Contracting, LLC. Upon evaluation and concurrence of the CMaR review panel, which included

delegates from the Developer, Summit Lakes, and Villas, on August 26, 2021, Staff sent out a notice to negotiate the bid administration and CMAr fee for the Summit Lakes Dam Repair Project. On September 7, 2021, Staff received a proposal from Downey Contracting, LLC, requesting a bid administration fee of \$10,000.00 and a CMAr fee of 8% of the total construction cost. Staff has determined that given the cost of the engineer's estimate, this proposal is reasonable and in line with industry prices. Staff has completed negotiations with Downey and is prepared to submit K-2122-67 for review and approval.

In early October 2021, the City received payments totaling \$567,470 from the other members of the Participation Agreement. These funds were deposited into revenue account Donations-Organizations (509-363373). This amount will need to be appropriated into the Misty Lake Dam Repair Project Construction Account (50596666-426101, DR0065).

**RECOMMENDATION 1:**

Staff recommends that Contract K-2122-67 with Downey Contracting, L.L.C. for Construction Manager at Risk services for the Misty Lake Dam Repair, in the amount of \$10,000 be approved.

**RECOMMENDATION 2:**

Staff recommends appropriation of \$567,470 from revenue account Donations-Organizations (509-363373) to the Misty Lake Dam Repair Project Construction Account (50596666-46101).