



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 10/10/2023

REQUESTER: Jason Olsen, Director of Parks & Recreation

PRESENTER: Elisabeth Muckala, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2324-84: A RECIPROCAL EASEMENT AGREEMENT BETWEEN THE CITY OF NORMAN, NORMAN REGIONAL HOSPITAL AUTHORITY D/B/A NORMAN REGIONAL HEALTH SYSTEM, AND NEP NORMAN, LP, ESTABLISHING RECIPROCAL BLANKET EASEMENTS, PROMULGATING RULES AND DESIGN STANDARDS FOR CONSTRUCTION, AND GENERALLY SETTING STANDARDS FOR OPERATION AND USE OF COMMON, ADJACENT AND/OR JOINED ACCESSES AND AREAS WITHIN THE PORTER HEALTH CAMPUS.

BACKGROUND:

In October 2015, Norman citizens passed the NORMAN FORWARD initiative, funding various quality-of-life projects through a one-half percent (½%) sales tax increase over 15 years. The NORMAN FORWARD Initiative included authorization for a project to construct a new Senior Citizen's Recreation Center. After ongoing community input, the project's scope was expanded into a Senior Wellness Center, later named the Adult Wellness and Education Center (AWE).

The AWE will be located on City-owned land on the southeast corner of Norman Regional Health System's (NRHS) Porter Wellness Village, off North Findlay Avenue. The new AWE will include an indoor, heated saltwater pool with lap swimming, water walking, and hydrotherapy seating; an indoor walking track and training space; a fitness-classroom area; lounge and game rooms; both wet and dry craft areas; a small prep and demonstration kitchen; and multipurpose rooms that can be used for eating, events, classes, theatrical plays, games, and much more.

The AWE was authorized in the NORMAN FORWARD initiative in 2015 but was unfunded at that time. The AWE was later funded through two Council actions: re-allocation of Norman Forward funds through securing the Griffin Park land with a long-term land lease instead of a land purchase (\$7.4 million); an allocation of \$4.8 million from federal Coronavirus Aid, Relief & Economic Security (CARES) Act reimbursements (Resolution R-2021-63); and a land exchange with the Norman Regional Hospital System where the City received \$426,000 in cash and what was then appraised for \$1.2 million in property (718 N. Porter) for a total of a \$14 million budget for construction and design. On December 13, 2022, the Council appropriated \$1.2 million in General Fund balance to up-front the anticipated revenue from the sale of the 718 N. Porter

property. The sale proceeds have not been reimbursed to the General Fund; effectively the General Fund has contributed \$1.2 million to the AWE project.

Oklahoma City architectural and engineering (A/E) firm Frankfurt, Short, Bruza (FSB) was selected as the A/E consultant for this project in March 2018. FSB has completed the project's schematic design and construction documents and is assisting with construction administration through the project's completion. The AWE project is scheduled to open in late Fall of this year; final furniture, fixture, and equipment purchases are being made.

The property on which the AWE project is located is within "Porter Campus" for Norman Regional Hospital Authority/Norman Regional Health System ("NRHS"). The Porter Campus was previously rezoned and platted through a joint effort of NRHS and the City, as sole fee title owners of the property lying therein. The Porter Campus was platted pursuant to PP-2122-9 and rezoning was approved as a Planned Unit Development pursuant to Ordinance O-2122-29, both of which were approved by the Norman City Council on January 25, 2022.

NRHS is the majority property owner within the Porter Campus. NRHS's intentions for the property on the Porter Campus include its own utilization and occupation of structures there, as well as sale and/or lease of its property. NRHS desires to ensure that the Campus is developed and operated in a manner that is consistent with its mandate to serve the public interest and provide for the health and wellness needs of regional communities throughout south central Oklahoma, which includes, without limitation, providing quality and compassionate health care services and education to the regional community in a responsive, efficient and safe manner, and to otherwise provide goods and services which improve the quality of life in the regional community. This "NRHS Mission" is set forth within the Reciprocal Easement Agreement considered herein, Contract K-2324-84.

In furtherance of the NRHS Mission, NRHS has previously entered into a certain Ground Lease Agreement dated December 15, 2022 for a long term lease (including extensions, the NEP Ground lease lasts as many as 90 years) of one parcel of the Porter Campus to NEP Norman, LP ("NEP Ground Lease"). The NEP Ground Lease provides for NEP's construction of an Inpatient Behavioral Health Hospital on a parcel ("NEP Parcel") directly adjacent, and to the east of, the parcel owned by the City of Norman within the Porter Campus ("City Parcel") and upon which the AWE Project has been constructed. The NEP Ground Lease provides that NEP shall serve as landlord to the ultimate "Space Tenant," Behavioral Health Porter Village, LLC (a joint venture between Oceans Acquisition Inc. and NRHS) that will occupy and operate the behavioral health facility.

DISCUSSION:

The REA is entered into between the City, NEP (as a Ground Lessee of the NEP Ground Lease) and NRHS (as primary fee owner and "Founder" of the Porter Campus). The REA, in general, provides terms for the common use of paths, easements, drives and sidewalks, for the maintenance and upkeep of common infrastructure and spaces, and sets the ground rules for construction, maintenance and occupation of the Porter Health Campus, subject to the NRHS's authority as "Founder."

More specifically, "Drive Lanes" and "Walkways" are identified and defined within the REA, as well as phased modifications to configurations accounting for the newly platted rights-of-way and

infrastructure, all as demonstrated in part by exhibits D, E, F, G-1 and G-2 of the REA. The Drive Lanes and Walkways are dedicated as blanket easements to be used for vehicular and pedestrian ingress, egress and access (as applicable) within the Porter Campus, and to, from and between the buildings of the Campus and the public rights-of way, for the benefit of the Campus and Benefitted parties. "Benefitted Parties" are defined as the fee owners of property within the Campus (as well as their heirs, successors, assigns, grantees, mortgagees, ground lessees, tenants or subtenants thereof, and the officers, directors, concessionaires, agents, employees, customers, visitors, and other licensees or invitees"). Currently, the only fee owners are the City and NRHS, and the only identified Ground Lessee is NEP. The REA provides terms relating to each property owners modification to the easements, including maintenance responsibilities for each fee owner, in order to ensure minimal disruption to other Campus parcels. The defined "Drive Lanes" include the Fire Circulation Drive addressed by that separate Compensate Agreement currently before City Council for consideration as a companion item, Contract K-2324-68. The Fire Circulation Drive is also demonstrated on Exhibit J to the REA.

The REA provides blanket easements for Utility Facilities and Storm Water Drainage, with similar access and modification language. Additionally, these blanket easements provide parameters for adjacent property owner tie-ins meant to further minimize disruption to other Campus parcels. These easements are identified and defined within the REA and partially demonstrated on Exhibits H, I-1, and I-2 to the REA. Notably, the REA address a "Stormwater Vault" located on Porter Campus, and provides parameters for the access rights as well as maintenance responsibilities for the Vault. However, the REA notes that the City Parcel does not utilize the Vault, as a result, the substance of these provisions do not affect the City. Similarly, the REA provides for Construction and Maintenance Easements "as reasonable and necessary for the construction and maintenance of structures and related activities on the Parcels and within the Campus."

The REA provides locations for and sets standards for the installation of new, or refurbishment of existing, wayfinding signage. NRHS, as founder, is responsible for upkeep and maintenance and all installations must meet applicable regulations, including but not limited to the applicable PUD.

Further, the REA provides for the maintenance of "shared improvements" within the Campus. Again, the Storm Water Vault is referenced, but made expressly inapplicable to the City Parcel. The only "shared improvement" that the City may be called upon, as a property owner within the Porter Campus, to contribute to the operations, maintenance, repair, replacement and reconstruction of elements located within the privately-maintained portions of the "Wellness Way" ROW demonstrated on PP-2122-9, which includes the cleaning and sweeping, lighting, as well as maintaining and replacing landscaping. However, per the REA, any such cost must be offset by any amounts incurred or invested already provided by the City in such areas, in the case that the City directly provides any such services.

Finally, the REA establishes general "Campus Rules," the purpose of which is anticipate unacceptable behaviors and set conditions for operations within the campus. These Rules exempt the City, to the extent its role as a public actor would prevent it from enforcing or imposing certain rules implicating constitutional rights. These rules have been reviewed by City Parks Staff to ensure compatibility with the planned operation of the AWE Project, and are otherwise drafted in a manner consistent with applicable regulations and, namely, the City of Norman

municipal code. The REA provides that NRHS, as Founder, may pass further rules, but exempts the City from application of any such future or additional rules.

Importantly, there are several aspects of the REA that were not compatible with the City's public ownership of the City Parcel or operation of the AWE Project, and thus the REA has been revised to exempt the City Parcel (while it is publicly-owned) from the following provisions:

- Certain use restrictions set forth in Section 10;
- Any rules, excepting those already set forth in Exhibit M, created by the Founder pursuant to Section 11(a);
- Design Guidelines (other than those set forth in Exhibit M) or Sign Guidelines set forth in Section 12;
- Liability Insurance as set forth in Section 14(a) (the City may provide evidence of self-insurance);
- Property Insurance as set forth in Section 14(b) (instead, the City may insure the AWE Project in the same manner it insures all other City buildings);
- Limitations on liability per Section 16(o);
- Waivers of damages, remedies and warranties per Section 16(p);

The REA is designed to operate as a covenant running with land. Therefore, it may only be formally amended, and must be filed of record in order that it attach to the real property within the Porter Campus, including the City Parcel.

The approval of the REA requires the City's concurrent acceptance of Easement E-2324-26, a drainage and utility easement from NRHS to the City of Norman ("NRHS Easement"). In turn, the approval of the Compensation Agreement, K-2324-68, is contingent upon the concurrent approval the REA, K-2324-84. The Compensation Agreement, the REA, and the NRHS Easement are thus presented together as companion items for the City Council's consideration.

RECOMMENDATION:

City Staff recommends approval of K-2324-84 and its companion items, K-2324-68 and E-2324-26, for the ultimate filing of record as a covenant running with the land as to the City Parcel in the NRHS Porter Campus.