



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1617-137

File ID: K-1617-137 **Type:** Contract **Status:** Non-Consent Items

Version: 1 **Reference:** Item 30 **In Control:** City Council

Department: Legal Department **Cost:** \$40,000.00 **File Created:** 06/22/2017

File Name: Misty Lake Dam Repair Project Participation Agreement **Final Action:**

Title: CONTRACT K-1617-137: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND SUMMIT LAKES PROPERTY OWNERS ASSOCIATION, AND THE SUMMIT VILLAS PROPERTY OWNERS ASSOCIATION AND SUMMIT LAKES LLC FOR THE MISTY LAKE DAM REPAIR PROJECT AND BUDGET APPROPRIATION FROM THE CAPITAL FUND BALANCE IN THE AMOUNT OF \$40,000 FOR THE CITY'S SHARE.

Notes: ACTION NEEDED: Motion to approve or reject Contract K-1617-137 with Summit Lakes LLC, Summit Lakes POA, and Summit Villas POA; and, if approved, authorize the execution thereof and appropriate \$40,000 from the Capital Fund Balance (050-0000-253.20-00) to Project DR0065, Misty Lake Dam Repair (50-9666-431.62-01) .

ACTION TAKEN: _____

Agenda Date: 06/27/2017

Agenda Number: 30

Attachments: Text File K-1617-137, Misty Lake Dam Participation Agreement, Exhibit A, Application for Construction, Exhibit B, Costs, Exhibit C, Drainage Easement Location

Project Manager: Leah Messner, Assistant City Attorney

Entered by: sencinias@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File K-1617-137

Body

BACKGROUND: The Summit Lakes Addition and the Summit Villas Addition are located between 24th Avenue SE and 36th Avenue SE on Alameda Street. Currently, the Summit Lakes Addition is platted into ten different sections comprising 542 lots and the Summit Villas Addition is platted into 66 lots. The Summit Lakes Addition also includes 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 have been completed and the cost of necessary repairs is estimated to be within the range of \$595,000 and \$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 have come to a proposed Participation Agreement for the Misty Lake Dam Repair Project.

DISCUSSION: The Summit Lakes Property Owners Association and the Summit Villas Property Owners Association have offered to participate through a pro rata lot assessment assuming such an assessment is approved by the members of the respective property owners associations. The Developer, Summit Lakes LLC, has 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. For these reasons, under the terms of the proposed Agreement, the City will accept permanent ownership and maintenance of the Misty Lake Dam following completion of the repair project. In addition, the City is willing 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 the year 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. The OWRB and the City's Department of Public Works have accepted these plans. The current engineering estimate prepared by Cardinal is based on construction of the Project in two phases; however, elimination of the phased approach is likely to yield substantial cost savings in mobilization and bonding costs with a revised estimate of \$595,000. In order to realize those project savings, an additional \$42,000 in engineering costs is necessary. The POAs and/or the Developer have agreed to cover those costs which will be due to the City within seven business days following execution of the Agreement.

Once the necessary engineering documents are completed, 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 contract with an engineering firm to provide construction oversight at the City's cost. This cost is anticipated to be \$40,000. Upon approval of this Participation Agreement, this amount will be appropriated from the capital fund balance to the Misty Lake Dam Repair Project expenditure account.

The City will 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. At the completion of construction and final acceptance of the repairs, the City will begin to collect the assessments through the City's utility billing process and will charge an administrative fee of \$1 per month per lot. The POAs repayment terms will be negotiated with the private lender, but it is currently contemplated that they will have ten years to repay the funds.

The Developer and the POAs have also agreed to joint fund \$27,530 in materials costs. In addition, the Developer has further agreed to an additional cash payment of \$20,000 along with agreeing to an assessment, at the same rate as the platted lots within the Additions, for the future Section 11 lots. Those assessments will be paid at the time of lot sale to the end user/occupant of the lot. No other future developer-owned lots will be subject to these assessments for the dam repairs.

Funding for the project will be provided through a private financing agreement established by the POAs and the Developer with a private Lender. Upon closing of the private financing, proceeds shall be paid over to the City to be placed in a separate Capital Fund project account specifically for the Misty Lake Dam Repair Project. Then, once the project is completed and final costs have been verified by the Public Works Department, any excess funds shall be returned to the POAs or the Developer on a pro-rata per lot assessed basis, shall be payment against outstanding project loans, or shall be reimbursement of project costs, as appropriate. 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.

The POAs will 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 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.

The OWRB legal staff has been apprised of the status of the Participation Agreement. The feedback was very positive toward this effort. Assuming the Participation Agreement is approved and other contingencies are met, the POAs will be encouraged to petition the OWRB to modify its Consent Order to recognized the repairs being accomplished in one Phase, rather than two Phases, and to close out the need for further action once the Project is completed.

RECOMMENDATION: The above-discussed agreement is the product of years of negotiation among the parties, and it attempts to resolve a unique concern for the City of Norman - the structural integrity of one of only three high hazard dams within the City of Norman. If the City Council wishes to move forward with the public-private partnership as proposed by the above Participation Agreement for the Misty Lake Dam Repair Project, Staff recommends approval of Contract K-1617-137, and appropriation of \$40,000 from the capital fund balance (050-0000-253.20-00) to account number 050-9666-431.62-01, #DR0065 which represents the City's anticipated cost for Project construction observation.