



City of Norman, OK

Municipal Building Council
Chambers
201 West Gray Street
Norman, OK 73069

Text File

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title

CONTRACT K-1213-178: A STORM WATER SYSTEM REPAIRS AGREEMENT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND CAMBRIDGE ESTATES HOME OWNERS ASSOCIATION, INC., FOR THE CITY'S SHARE OF STORM WATER SYSTEM DRAINAGE FLUME REPAIRS LOCATED IN CAMBRIDGE ADDITION, SECTION V.

body

BACKGROUND: The plat of Cambridge Addition, Section V, was approved by the City Council in July 26, 1994. As indicated on the plat, Block "A" and Block "B" are designated as open space areas and drainage easements to be maintained by the "*mandatory property owners association*". According to the records of the Cleveland County Assessor, the Cambridge Homeowners Association is the owner of record of Block "A" and Block "B".

Block "A" is a 5.10-acre parcel that contains a drainage channel that flows from 48th Avenue West to Cypress Lake located in the 18.04-acre Block "B". The total contributing drainage area upstream of the Cypress Lake outlet is approximately 250 acres, of which approximately 85 acres originates from portions of the Cambridge Addition west of 48th Avenue West. The remaining drainage area is located east of 48th Avenue West and includes portions of the following additions to the City of Norman - Brookhaven, Heritage Place, Cambridge Place, and Quailbrook.

As is the case for many homeowners associations (HOAs) and property owner associations (POAs) in Norman, the Cambridge Homeowners Association has been challenged by the magnitude, expense and complexity of maintaining and repairing drainage infrastructure located in privately-held land parcels and open space areas, or in public drainage easement areas in which the HOA/POA has committed to long term maintenance. In April 2009, the City issued Floodplain Permit No. 441 to the Cambridge HOA for the repair of a drainage outlet structure with timber headwall in the northeast portion of Cypress Lake. In March 2011, the City issued Floodplain Permit No. 481 to the Cambridge HOA for a similar project in the south-southeast portion of Cypress Lake.

Cambridge Homeowners Association's challenges related to the maintenance of drainage infrastructure were further and more comprehensively highlighted in November 2011 when they made application for a floodplain permit to repair or replace several drainage structures around Cypress Lake and the drainage channel that flows from 48th Avenue West to Cypress Lake. In the floodplain application materials, the Cambridge HOA explained further their intent to perform stream bank stabilization of the dam embankment located immediately adjacent to 10 Mile Flat Creek that impounds Cypress Lake, and to install improvements to repair and prevent erosion at the lake's outlet structure. Floodplain Permit No. 494 was approved to provide for the construction of the referenced drainage improvements when funds became available with the condition that Cambridge HOA submit plans for each individual project for review by the Public Works Department prior to construction.

On March 12, 2012, then-Council Member Hal Ezzell, Public Works Director Shawn O'Leary, Storm Water Engineer Bob Hanger, Cambridge HOA President Darrel Janaway, Cambridge HOA Board Member Robert Bruce, and HOA Engineering Advisor J.W. Dansby met to discuss the implementation of the various projects as well as the availability of City funds in support of the projects. The meeting's discussion was primarily whether the Cambridge HOA or the City of Norman is responsible for the repair and maintenance of storm drainage infrastructure within the privately-maintained greenbelts within Cambridge Addition.

DISCUSSION: The Cambridge HOA, in their January 14, 2013 letter to Public Works Director Shawn O'Leary, provided an update regarding the condition of two (2) drainage flumes that were in the most need of immediate repair. The Cambridge HOA expressed their opinion that, in consideration of the magnitude of scope and complexity of the flume replacement projects, and that one of the flumes is located across from the City of Norman's Todd 'Lee' Gottshall II Memorial Park and within the Norman Greenbelt System, City assistance is warranted for the design, construction and funding for the flume replacement project. The Cambridge HOA proposed and requested a cost share arrangement whereby the City and the Cambridge HOA would share equally in the construction costs of the flume replacement. Based on construction cost quotes solicited and provided by the Cambridge HOA, the total cost of replacing the 2 flumes is estimated not to exceed \$20,450.

Regarding the matter of a 50/50 cost sharing arrangement between the City of Norman and the Cambridge HOA, neither City policy nor the City budget currently provide for such an arrangement. Further, the City's Storm Water Master Plan (SWMP), adopted by City Council in June 2011, establishes an "Enhanced Maintenance Program" to address these situations but the funding mechanism for the SWMP has not yet been implemented. One of the areas for improvement identified in the SWMP includes the earthen channel draining into Cypress Lake. If funding were put into place to further develop a City-wide drainage system, it is contemplated that privately held drainage easements such as this one, could be accepted by the City for future maintenance as part of the City's storm water drainage system. Even though establishment of a funding mechanism and dedication of the privately held drainage easements has not occurred, the Legal Department has advised that Council adoption of the SWMP containing a recognition of the importance of maintenance of these channels to the functioning of the City's overall storm water drainage system provides a legal basis upon which public funds can be expended for improvements within a privately held drainage easement, provided the owners of the privately held drainage easements have consented to the improvements. Oklahoma Constitution Article 18, §14; *Helm v. Childers*, 75 P.2d 398, 399 (1938)(the term "public purpose" should not be interpreted in a narrow and restrictive sense); *Board of Commissioners v. Shaw*, 182 P.2d 507, 515 (1947)(a public purpose "affect [s] the inhabitants of the state or taxing district as a community, and not merely as individuals."); *Burkhardt v. City of Enid*, 771 P.2d 608, 610. Along these lines of thinking, the Legal Department has prepared Contract No. K-1213-178 "Agreement for Storm Water System Repairs". The Agreement sets forth the basic responsibilities of the City and the Cambridge HOA as follows:

Responsibilities of the City.

- A. The City will perform the final design, bidding, and construction administration for this Project.
- B. In addition to the services above, the City will contribute funds equal to fifty percent (50%) of the construction costs for the Project in an amount not to exceed \$10,500.

Responsibilities of the HOA.

- A. The HOA will contribute funds equal to fifty (50%) of the construction costs for the Project in an amount not to exceed \$10,500. Such funds will be paid to the City within ten (10) days of award of the construction contract to the selected contractor.
- B. The HOA agrees to continue to provide routine maintenance of the detention facilities and drainage channels contained within the HOA property.

The City's current storm water policies and past practices require private funding for improvements or maintenance of privately held drainage systems in subdivisions. The Contract before Council is not consistent with current policy, but does potentially address some problems identified in the SWMP. City staff also sees an opportunity to incorporate an alternative to the concrete flumes based on the City's recently adopted Storm Water Low Impact Design Manual. One alternative design might include a vegetated swale anchored in place with a turf reinforcement mat and/or ScourStop transition mat.

Since a funding mechanism, such as a storm water utility, does not currently exist, in the event the City

Council desires to move forward with this project, a plausible funding source for the project and the 50/50 cost sharing arrangement may include existing budget capacity found in Project Number DR0013 Drainage - Miscellaneous Projects (account number 050-9967-431.61-01). Historically, this budget item is provided by City Council to address small, unplanned and unfunded drainage projects. Typical projects include repairing concrete flumes between houses in drainage easements, damaged or improperly sized storm sewer inlets, and installation of new storm sewer inlets. The current unencumbered balance of this project account is \$43,785.

RECOMMENDATION NO. 1: If Council desires to partner with the Cambridge HOA to accomplish improvements or maintenance to the storm water drainage facilities within privately held drainage easements, then Contract K-1213-178 "*Agreement for Storm Water System Repairs*" with Cambridge Homeowners Association, provides a mechanism for that type of partnership by recognizing the drainage improvements as part of the City-wide drainage system consistent with the SWMP.

RECOMMENDATION NO. 2: If Contract K-1213-178 "*Agreement for Storm Water System Repairs*" with Cambridge Homeowners Association is approved; staff recommends that City Council identify Project Number DR0013 Drainage - Miscellaneous Projects (account number 050-9967-431.61-01; project DR0013) as the source of funding to offset the City's share of the 50/50 cost share agreement.