



City of Norman, OK

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

Master

File Number: K-1314-43

File ID: K-1314-43

Type: Contract

Status: Consent Item

Version: 1

Reference: Item No. 31

In Control: City Council

Department: Legal Department

Cost:

File Created: 08/08/2013

File Name: Cedar Lane Widening Property Acquisition

Final Action:

Title: CONTRACT NO. K-1314-43: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND III MOORE PROPERTIES, LTD, FOR PROPERTY ACQUISITION IN CONNECTION WITH THE CEDAR LANE WIDENING PROJECT AND TRANSFER OF BOYD VIEW PROPERTY AND RESERVING FUTURE DEVELOPMENT REQUIREMENTS OF THE BOYD VIEW PROPERTY; AND ACCEPTANCE OF THE RIGHT-OF-WAY ACQUISITIONS AS DESCRIBED IN THE SUBJECT AGREEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS TO EFFECTUATE THE TRANSFERS.

Notes: ACTION NEEDED: Motion to approve or reject Contract No. K-1314-43 with III Moore Properties, LTD, for property acquisition and transfer of of Boyd View Property, and, if approved, authorize the City Manager to execute the necessary documents to effectuate the transfers .

ACTION TAKEN: _____

Agenda Date: 08/13/2013

Agenda Number: 31

Attachments: K-1314-43 8-8-13, Maps K-1314-43, Deeds
K-1314-43, Easements K-1314-43

Project Manager: Leah Messner, Assistant City Attorney

Entered by: denise.johnson@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File K-1314-43

Body

BACKGROUND: On August 28, 2012, the City of Norman voters approved a \$42.5 million bond project that includes eight major transportation/storm water projects. These eight projects are anticipated to cost \$89 million with federal funds paying over 50% of the costs. The projects include:

- Cedar Lane widening and new traffic signal (2013)
- Franklin Road Bridge replacement over Little River (2014)
- Main Street Bridge replacement and storm water improvements - Brookhaven Creek (2014)
- Alameda Street widening (2015)
- 12th Avenue SE widening and improved traffic signal at SH-9 (2015)

- West Lindsey Street widening and storm water improvements (2016)
- 24th Avenue SE widening and new traffic signal (2017)
- 36th Avenue NW widening and 2 new traffic signals (2018)

The first planned project is the Cedar Lane Widening Project. This project is included in this year's Transportation Improvement Plan. If the City can finalize land acquisition, utility relocation and project design by August 2013, the City will receive approximately \$6.2 million in federal funds for this project.

The Cedar Lane Widening Project required the acquisition of forty-seven (47) easements from twenty (20) property owners. To date, all easements have been donated or purchased with the exception of twenty-one (21) easements from 4 property owners. Council approved Resolution No. R-1213-141 on May 28, 2013 declaring it to be a necessity to acquire these remaining parcels and authorizing the City Attorney to file for condemnation to achieve such acquisition. City Staff filed actions for condemnation in these cases on May 30, 2013. The case is proceeding through the litigation process.

Although the litigation process has started, this office has continued to explore potential settlement of acquisition of the necessary Right of Way for the Cedar Lane Widening Project by Agreement. This item presents a proposed Agreement to effectuate the Right of Way transfers without the need to continue the Court process. The Agreement was discussed with City Council most recently in Executive Sessions held on August 6, 2013. Based on Council discussions, the Agreement for Property Acquisition with this remaining property owner of Right of Way needed for the Cedar Lane Widening Project is being presented to Council for consideration at this time.

DISCUSSION: The appraisals of the subject properties were conducted by an Oklahoma Department of Transportation (ODOT) Certified Appraiser. Following completion of the appraisal, Staff reviewed the appraisal to evaluate the appraisal in order to correct any deficiencies and to insure that the appraisals of the property are in order.

The basis of requiring an appraisal and a review appraisal is that it insures that the restrictions of the Fifth Amendment of the United States Constitution and the Constitution of the State of Oklahoma are met. The Fifth Amendment provides in part: ". . . nor shall private property be taken for public use without just compensation." Further, the Constitution of the State of Oklahoma provides: "Private property shall not be taken or damaged for public use without just compensation. Just compensation shall mean the value of the property taken, . . ."

Finally, 11 O.S. § 22-104 provides that "every municipality shall have a right to: . . . (3) exercise the right of eminent domain for any municipal purpose, . . ." Section 22-105 provides:

Private property may be taken for public use or for the purpose of giving a right-of-way or other privilege for any necessary purpose, in the manner provided by law; but in every case the municipality shall make adequate compensation to the person or persons whose property shall be taken or injured thereby as provided by law.

The Courts have viewed "just compensation" as the fair market value of the property taken. . . . fair market value . . . means money which [the] purchaser willing but not obligated to buy property would pay to the owner willing but not obligated to sell it." *Grand River Dam Authority v. Bonford*, 111 P.2d 182 (Okla. 1941).

Since filing for condemnation, Staff has worked closely with representatives for Ill Moore Properties to identify values and other issues that would reasonably settle the condemnation case and enable the City to acquire the property in a timely fashion. Council has been updated on those negotiations during four executive sessions since May 8, 2013, the most recent being August 6, 2013. Contract No. K-1314-43 represents the culmination of those negotiations.

The initial offer by the City, following appraisals of the property, was \$174,200. The property owners felt their property should be valued at \$224,337. The City has recently increased their offer to \$190,000. Council has been updated on those negotiations during four executive sessions since May 8, 2013, the most recent being August 6, 2013. Although no additional movement on value has occurred, Ill Moore Properties has offered to donate the necessary right of way to the City in the Cedar Lane Widening Project, and has also asked that the

City allow private development of land currently utilized by the City for storm water drainage near Classen Boulevard and Lindsey Street. Contract No. K-1314-43 represents the culmination of those negotiations and outlines the terms of the property transfers. The terms of the agreement are summarized below:

- Transfer of Property: Under this Agreement, III Moore is donating easements to the City needed for the Cedar Lane Project.
- One motivation of III Moore, LLC's willingness to donate the Cedar Lane Widening Project parcels is their interest in acquiring City property adjacent to other property that they own south of Lindsey Street. The property III Moore, LLC is interested in is 2.13 acres of City-owned property, the Boyd View Property, near the intersection of Lindsey Street and Classen Boulevard. III Moore, LLC is interested in combining the Boyd View Property with their current ownership to create a more marketable property for future development. If the property were to be deeded to them, III Moore, LLC is willing to reserve a majority of the deeded property to be used as open space, storm water detention, and/or park type amenities that will be accessible for use by the adjacent neighborhood. This commitment for open space and park type amenities would be guaranteed by a deed restriction when the property is transferred.
- In 1963, as part of the Boyd View Estates Plat, the Boyd View Property was dedicated as "public" on the plat. The practice at this time was to dedicate land as "public" to relieve the requirement for a developer to improve adjacent arterial streets. In 1985, the Boyd View Property was incorporated into the Land Use Plan as "parkland". However, the current Park Master Plan does not recommend the Boyd View Property for any improvements because of site issues of limited accessibility, visibility, and lack of on-street parking. In its current state, the Boyd View Property is a functioning drainage channel. The Parks Board, at their August 1, 2013 meeting, considered the idea of transferring property that the City has no plans to develop with a deed restriction to provide privately owned, but publicly accessible, open space upon future development. The Parks Board endorsed the concept by vote of a five in favor and two opposed. The consideration for the transfer of the Boyd View Property will be cited as a nominal dollar amount coupled with the reservation of an appropriate drainage easement, and a Deed restriction that will require future development to included open space and park like amenities that would be accessible to the public and particularly the adjacent Boyd View neighborhood.

Council has discussed the Property Acquisition Agreement at its August 6, 2013, Executive Session. If Council desires to proceed with this concept, then two actions would be required. The first action is consideration and approval of Resolution R-1314-23 that abandons the Boyd View Property for public park use, but reserves a portion of the Boyd View Property for drainage purposes. This action will be on the Agenda as a separate item. The second action is consideration and approval of Contract No. K-1314-43 regarding Property Acquisition for the Cedar Lane Widening Project.

It should be noted that with the transfer of Boyd View Property that the City will be retaining the right to some uses that benefit the public. Even if City Council declares the Boyd View Property as abandoned, the proposed deed restriction and limitation in the Resolution regarding the public drainage easement, serve to ensure that the property retains public functions. III Moore, LLC, and any successive buyers who desire to develop the property, will be required to provide a majority of the deeded property as open space and provide park like amenities. And, the City of Norman will maintain a public drainage easement, with accompanying right to maintain and service the easement, to continue to solve storm water and drainage issues in the area.

Approval of this Agreement will result in dismissal of the condemnation court cases with prejudice and will ensure the City has acquired the property it needs to access federal funds for the Cedar Lane Widening Project.

RECOMMENDATION: For the reasons outlined above and based on Council's input in Executive Session, Staff recommends approval of Contract No. K-1314-43, acceptance of the transfer of the right-of-way acquisitions as described in the subject Agreement, and the transfer of Boyd View Property with the reservations outlined above, and authorization for the City Manager to execute the necessary documents to effectuate these transfers.