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**Title:** AMENDMENT NO. ONE TO CONTRACT K-1516-129: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND THE OKLAHOMA DEPARTMENT OF COMMERCE (ODOC) FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RELIEF (CDBG-DR 13) PROGRAM FOR 2013 DECREASING THE CONTRACT AMOUNT BY \$2,587,375.65 FOR A REVISED CONTRACT AMOUNT OF \$8,015,032.35.

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9/25/2018	1	City Council		

AMENDMENT NO. ONE TO CONTRACT K-1516-129: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND THE OKLAHOMA DEPARTMENT OF COMMERCE (ODOC) FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RELIEF (CDBG-DR 13) PROGRAM FOR 2013 DECREASING THE CONTRACT AMOUNT BY \$2,587,375.65 FOR A REVISED CONTRACT AMOUNT OF \$8,015,032.35.

**BACKGROUND:** The City of Norman and Cleveland County both received damages to roads after natural disasters including a May 19, 2013 tornado and multiple (six or more) wild fires in August of 2012. These disasters were all located in the same general area of southeastern Norman/Cleveland County. Damages to these roads with thin pavement sections were caused by heavy equipment providing aid during the disaster and recovery phases of the responses.

In June 2014 the U.S. Department of Housing & Urban Development (HUD) released its allocations and program requirements for the Community Development Block Grant - Disaster Relief 2013 Program (CDBG-DR 13), based on its estimate of critical unmet needs for repairing and rebuilding housing and infrastructure and economic revitalization in the most impacted areas, primarily using data provided by the Federal Emergency Management Agency (FEMA). Within these eligible areas, the Federal Register Notice required that a minimum of \$41.2 million of the total State of Oklahoma CDBG-DR funding must be expended in Cleveland and Creek Counties (exclusive of funds directly provided to the City of Moore).

In July 2014 the City of Norman and Cleveland County submitted a joint preliminary scope of projects totaling over \$49,000,000. As the projects to be submitted continued to be developed, ODOC working under the direction of HUD, instructed the City of Norman and Cleveland County to determine the phasing and grouping of projects and to request funds accordingly. ODOC then bundled multiple requests and submitted to HUD for "Rounds" of funding. Due to the specific two year contract timeframe mandated in the funding legislation, ODOC and HUD aligned the contractual allocation of the construction funding as projects are ready to proceed. The City of Norman projects are detailed in the table on Attachment One and the map on Attachment Two.

The City of Norman was awarded funding under two separate application submittals. Application CI-00064 funds were allocated as follows:  
Round Three: \$731,712; Design for seven locations  
Round Nine: \$10,602,408; Construction for five locations  
Round Twelve: \$719,970; Additional construction funds for five locations

Application CI-00102 funds were allocated as follows:  
Round Seven \$5,004,821; Design and construction for two locations.

Due to the complexity of the projects being funded with the CDBG DR program statewide, ODOC soon determined that the two-year completion time-frame for several projects was not feasible. Under the instruction of HUD, ODOC utilized an alternate method of reimbursements which circumvented this issue.

**DISCUSSION:** The City of Norman accepted Contract No. K-1516-129 on April 12, 2016 from the Department of Commerce in the amount of \$10,602,821 in the Round Nine Allocation for the construction of five project locations. The two-year time-frame for this award actually started on March 11, 2016 when ODOC requested Round Nine funding from HUD. Contracts K-1516-145 and K-1516-146 with Silver Star Construction were approved by the Norman City Council on May 24, 2016 for the construction of the five locations. Multiple projects statewide were experiencing difficulties in meeting the two-year time-frame due to the scope and complexity of the projects. The City of Norman began experiencing significant delays prior to the start of construction due to the need for utility relocation by AT&T.

AT&T was provided construction plans and documents on May 9, 2016 (after bids were received and prior to execution of construction contracts). Atkins, Inc., Project Engineer for the City of Norman, has detailed logs of multiple contacts made with AT&T throughout this process. Final relocation of utilities was not completed until May 2017, resulting in a one year delay to these projects. As described above and in the letter from the Oklahoma Department of Commerce, HUD had provided ODOC technical assistance that allowed for this initial two year timeframe to be extended. This was the approved procedure that both ODOC and the City of Norman were following. Monthly progress and expenditure reports were provided to ODOC via the OKGrants portal and regular telephone and email communication was held between the City of Norman and ODOC regarding the utility relocation and timeline difficulties that were occurring.

The method that ODOC was utilizing required them to expend benchmark totals of funds at regular intervals. HUD had determined that although the initial guideline was to expend each contract within a two year timeframe, this expenditure method satisfied the criteria for timeliness. On March 11, 2018 HUD missed meeting the scheduled benchmark total. At that time the Inspector General (IG) notified ODOC that the methodology that HUD had approved would not be allowed and that ODOC was required to formally submit a request for a contract extension. The contract extension that ODOC submitted was denied by the IG for the primary reason that it was submitted one day late.

ODOC appealed this decision to HUD as well as the IG's office and each appeal has been denied. In May 2018 representatives from the Washington DC HUD Office of Disaster Recovery conducted an on-site monitoring and this situation and the appeals were discussed in detail with multiple staff members as well as the City Attorney. They confirmed the Inspector General's ruling is final. One item that was discussed in detail during this visit was that as the projects being undertaken by Cleveland County are completed, after contract closeout all remaining funds will be de-obligated and ODOC at that point can obligate remaining funds to the City of Norman. The current estimated balance is approximately one million dollars. The timeline for the reallocation of funds from ODOC of Cleveland County's funds to the City of Norman is approximately six months, dependent on the completion schedule of the Cleveland County's projects.

A letter from ODOC confirming the budget modification was received by the City of Norman on June 22, 2018 is provided in Attachment Three. The seven locations that were substantially underway continued construction under the existing contracts but to immediately partially offset this reduction, the City of Norman has placed a hold on K-1718-99 with Silver Star Construction, Inc. K-1718-99 was for the following two locations:

Project 4: 84th Ave NE (Rock Creek Road North to Dead End; 0.3 Mile)

Project 7: Rock Creek Road (108th Ave NE to 120th Ave NE; 1 Mile)

This contract was executed prior to the notification, but construction had not begun. The design is complete and the City acquired all of the necessary public rights-of-way and relocated existing utilities on those two roadways before this funding shortfall was announced. There is a potential that the construction of these two road projects will be financed by the City of Norman in coming years with the City's Capital Fund or the City's Street Maintenance Bond Program.

After the execution of this contract modification, the estimated shortfall of funds to reimburse City accounts is \$1,400,000. This balance includes contractual obligations to both Atkins North America, Inc. and Silver Star Construction, Inc. The balance of any remaining obligations after ODOC reallocation of the CDBG DR funds from Cleveland County to the City of Norman will be addressed with an Agenda Item requesting utilization of Capital Funds.

To summarize, of the \$17,058,911 in CDBG-DR funds promised by HUD to complete approximately 17 miles of roadway

improvements, \$2,587,375.65 has been unauthorized due to reasons mentioned above, leaving a final total of \$14,471,535.35 for these project. As a result, Projects 4 and 7 totaling approximately 1.5 miles in length have been put on hold until a funding source can be identified. The City anticipates receiving approximately \$1 million in excess CDBG-DR funds originally allocated to Cleveland County to put toward the \$1.4 million estimated City shortfall. The City budget impact is that the Fund 50 account is \$1.4 million short for now. Once the Cleveland County funds are received, staff will prepare a recommendation for City Council review on how to replace the remaining shortfall.

ODOC has frozen all pending City of Norman reimbursements until Amendment One to Contract K-1516-129 is accepted by City Council. Once it has been accepted, reimbursements will resume.

**RECOMMENDATION:** Staff recommends approval of Amendment One to Contract K-1516-129 with the Oklahoma Department of Commerce reducing the contract amount by \$2,587,375.65 to \$8,015.032.35.