



DATE: April 18, 2017

TO: Steve Lewis, City Manager
Anthony Francisco, Finance Director

FROM: Jeff Harley Bryant, City Attorney

SUBJECT: 2016 Quality Job Creation Incentive Payments
Development Agreement No. 5 - University North Park TIF

BACKGROUND

On January 28, 2014 the Norman Tax Increment Finance Authority (NTIFA), Immuno Mycologics, Inc. (IMMY), and the Norman Economic Development Coalition (NEDC) memorialized an agreement (Development Agreement No. 6, herein DA#6) providing incentives for job creations related to an Advanced Manufacturing Facility to be built in the University North Park Tax Increment Financing District (UNP TIF). DA#6 supports the City of Norman's economic development plans for expanding employment, attraction of major investments, preservation and enhancement of the tax base, and facilitation of investments here in the City. DA#6 provides that job creation incentive payments earned by IMMY are assigned for payment to NEDC.

Definitions under DA#6

Qualifying Job and Qualifying Wage calculations. Employers qualifying for job creation incentives must create a "Quality Job" and pay a "Qualifying Wage". A "Quality Job" is defined as a "permanent full-time employ[ee] . . . which [receives] fringe benefits . . . [and receives] a "Qualifying Wage". The employee must work at least 35 hours a week a "normal year" or 1,680 hours per year, whichever is less. Additionally, a "Qualifying Wage" is defined as "the average wage per New Job that results in an average hourly rate of at least \$24.04 per hour calculated on a quarterly basis" (\$50,000 per year).

Incentive for Creation of New Quality Jobs Schedule Calculations. DA#6 provides a schedule which is used to calculate quality job creation incentives earned by IMMY by satisfying the "Quality Job" and "Qualifying Wage" requirements. Once the number of new jobs created has been determined, then the incentive schedule will prescribe the percentage of incentive that is available based on average salaries of the new jobs created.

Quarterly Maximums per New Job. The Incentive Schedule in DA#6 also provides maximum payments an employer can receive per new job created. For instance, once a qualifying quarterly average per-employee wage is determined, a comparison is necessary to make sure that the "Quarterly Max per New Job" section of the Incentive Schedule is not exceeded.

ANALYSIS of 2016 Quarterly OESC forms from IMMY

The baseline to determine the addition of "New Quality Jobs" in 2016 that could be considered for quality job creation incentive payments is the total number of employees

shown on the quarterly form required to be filed with the Oklahoma Employment Security Commission (OESC) for Quarter 4 of 2013. The OESC form for Quarter 4 of 2013 filed by IMMY identifies 29 employees. The OESC forms filed by IMMY for each quarter of 2016 were then reviewed using 29 employees as the baseline to determine “New Quality Jobs”, and a “Qualifying Wage” for incentive considerations.

a. 2016 Quarter 1 - Incentive Payments

Total number of jobs indicated in this quarter is 47. This results in a net gain of eighteen jobs. To identify the new jobs to be considered for incentive, the names of employees at the end of 2013 were compared to the names of employees in the current quarter. There were a total of thirty-seven new employee names when compared to December of 2013. Of those thirty-seven new names, the average quarterly payroll for the top twelve equaled \$12,559.52 (\$50,238.08 annual equivalent), which is an average hourly equivalent of \$24.15. These twelve jobs meet the incentive payment criteria. Applying the yearly average salary to the Incentive Schedule, a 2.15% Credit is indicated. The incentive calculation for this quarter is \$3,240.36.

However, the Incentive Schedule caps the quarterly quality job creation incentive payments paid per new job based on the Average *Quarterly* Salary. Here, the quarterly maximum per new job at 2.15% is capped at \$268.75. Applying that capped amount to twelve new jobs equals a total quality job creation incentive payment of \$3,225.00 for this quarter. Therefore, based on the quarterly analysis of jobs created in Quarter 1 of 2016, the quality job creation incentive earned by IMMY and payable to NEDC is \$3,225.00.

b. 2016 Quarter 2 - Incentive Payments

Total number of jobs indicated in this quarter is 49. This results in a net gain of twenty jobs. To identify the new jobs to be considered for incentive, the names of employees at the end of 2013 were compared to the names of employees in the current quarter. There were a total of forty-four new employee names when compared to December of 2013. Of those forty-four new names, the average quarterly payroll for the top twenty equals \$12,808.75 (\$51,235 annual equivalent), which is an average hourly equivalent of \$24.63. These twenty jobs meet the incentive payment criteria. Applying the yearly average salary to the Incentive Schedule, a 2.15% Credit is indicated. The incentive calculation for this quarter is \$5,507.76.

However, the Incentive Schedule caps the quarterly quality job creation incentive payments paid per new job based on the Average *Quarterly* Salary. Here, the quarterly maximum per new job at 2.15% is capped at \$268.75. Applying that capped amount to twenty new jobs equals a total quality job creation incentive payment of \$5,375 for this quarter. Therefore, based on the quarterly analysis of jobs created in Quarter 2 of 2016, the quality job creation incentive earned by IMMY and payable to NEDC is \$5,375.

c. 2016 Quarter 3 - Incentive Payments

Total number of jobs indicated in this quarter is 55. This results in a net gain of twenty-six jobs. To identify the new jobs to be considered for incentive, the names of employees

at the end of 2013 were compared to the names of employees in the current quarter. There were a total of forty-seven new employee names when compared to December of 2013. Of those forty-seven new names, the average quarterly payroll for the top eighteen equals \$12,573.60 (\$50,294.39 annual equivalent), which is an average hourly equivalent of \$24.18. These eighteen jobs meet the incentive payment criteria. Applying the yearly average salary to the Incentive Schedule, a 2.15% Credit is indicated. The incentive calculation for this quarter is \$4,865.98.

However, the Incentive Schedule caps the quarterly quality job creation incentive payments paid per new job based on the Average *Quarterly* Salary. Here, the quarterly maximum per new job at 2.15% is capped at \$268.75. Applying that capped amount to eighteen new jobs equals a total quality job creation incentive payment of \$4,837.50 for this quarter. Therefore, based on the quarterly analysis of jobs created in Quarter 3 of 2016, the quality job creation incentive earned by IMMY and payable to NEDC is \$4,837.50.

d. 2016 Quarter 4 - Incentive Payments

Total number of jobs indicated in this quarter is 55. This results in a net gain of twenty-five jobs. To identify the new jobs to be considered for incentive, the names of employees at the end of 2013 were compared to the names of employees in the current quarter. There were a total of forty-two new employee names when compared to December of 2013. Of those forty-two new names, the total quarterly payroll for the top twenty-five equals \$15,152.82 (\$60,611.29 annual equivalent), which is an average hourly equivalent of \$29.14. These twenty-five jobs meet the incentive payment criteria. Applying the yearly average salary to the Incentive Schedule, a 2.25% Credit is indicated. The incentive calculation for this quarter is \$8,523.46.

However, the Incentive Schedule caps the quarterly quality job creation incentive payments paid per new job based on the Average *Quarterly* Salary. Here, the quarterly maximum per new job at 2.25% is capped at \$337.50. Applying that capped amount to 25 new jobs equals a total quality job creation incentive payment of \$8,437.50 for this quarter. Therefore, based on the quarterly analysis of jobs created in Quarter 4 of 2016, the quality job creation incentive earned by IMMY and payable to NEDC is \$8,437.50.

SUMMARY

Based on the quarterly analysis of jobs created for Calendar Year 2016, applied to the *Incentive for Creation of New Quality Jobs Schedule*, the quality jobs creation incentive earned by IMMY and payable to NEDC is as follows:

Quarter 1	\$ 3,225.00
Quarter 2	\$ 5,375.00
Quarter 3	\$ 4,837.50
Quarter 4	<u>\$ 8,437.50</u>
Total 2016 Quality Job Creation Incentive	\$21,875.00.

Year to Date Summary

Development Agreement No. 6 required IMMY to create at least 50 Qualifying Jobs over the ten year incentive period. As noted above Quality Job incentives were to be paid for those Quality Jobs that were paid a Qualifying Wage. Based on the 50 jobs to be created over the ten year incentive period, the projected incentive to be earned at the end of 2016 was \$16,125. These projections were very conservative.

Section 4.c of Development Agreement No. 6 specifies that the maximum payment for earned incentives shall be limited to \$770,000. This limit was included considering approximately 100 Quality Jobs at a Qualifying Wage over the ten year time period. Under this scenario, the incentives projected to have been earned by IMMY by the end of 2016 totaled \$25,415.

The total Quality Job incentives actually earned by IMMY through 2016 are \$39,258, with added cumulative payrolls in excess of 22.5% of what was projected to be achieved under Development Agreement No. 6. If you have questions or need additional information, please let me know.

Attachments:

DA#6
Data Analysis for Qrts. 1-4
Incentive projection worksheet

Reviewed by: Kathryn L. Walker, Assistant City Attorney
Jason Smith, NEDC Executive Director

Xc Sean Bauman, IMMY CEO

**UNIVERSITY NORTH PARK TIF
DEVELOPMENT AGREEMENT NO. 6**

This **ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT** (the "Agreement") made and entered this 28th day of JANUARY, 2014, by and among the **NORMAN ECONOMIC DEVELOPMENT COALITION** ("NEDC") a not for profit corporation organized under the laws of the State of Oklahoma, **IMMUNO MYCOLOGICS, INC.** (the "COMPANY"), a for-profit corporation authorized to transact business in the state of Oklahoma, and the **NORMAN TAX INCREMENT FINANCE AUTHORITY** (the "NTIFA"), a public trust having the CITY of Norman, Oklahoma as its Beneficiary.

WITNESSETH:

WHEREAS, the City of Norman, Oklahoma (hereinafter "CITY"), by Ordinance No. O-0506-66, adopted May 23, 2006, as amended by Ordinance No. O-0809-8, adopted August 26, 2008 (the "TIF Ordinance"), pursuant to the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 851, *et seq.*, adopted and approved the Norman University North Park Project Plan, as amended (the "Project Plan") and the project therein described (the "Project"); and

WHEREAS, the Project supports achievement of the CITY's economic development and redevelopment objectives for the Project area, including creation of a catalyst for expanding employment, attraction of major investment, preservation and enhancement of the tax base, and facilitation of investment, development and economic growth otherwise difficult, unlikely or impossible without the Project; and

WHEREAS, in accordance with the provisions of the Project Plan, the CITY has authorized up to \$8,250,000 in Economic Development Project Costs (as hereinafter defined) to be funded through apportioned incremental revenues generated from retail sales activities and increases in property values in the Project Area; and

WHEREAS, the CITY, as authorized in the Project Plan, has designated NEDC to undertake the financing for construction and development in support of the economic development activities and objectives of the Project; and

WHEREAS, the NTIFA, with concurrence by the CITY, issued \$8,250,000 in apportioned UNP TIF Economic Development Revenue Notes and \$8,250,000 in non-apportioned UNP TIF Economic Development Revenue Notes to NEDC on June 29, 2011, to be used in furtherance of the Economic Development component of the Project Plan (herein the "ED TIF Notes"); and

WHEREAS, NEDC purchased thirty (30) acres of Economic Development property in the University North Park TIF area on October 13, 2010, for the development of the UNP TIF Business Park and purchased an additional thirty-one and sixty-seven hundredths (31.67) acres of Economic Development property in the University North Park TIF area on December 5, 2013, a portion of which is to be used for the development of the UNP TIF Advanced Manufacturing Project; and

WHEREAS, the CITY and NEDC have jointly applied for and been awarded a grant of \$2,500,000 from the United States Economic Development Administration ("EDA Grant") for the purpose of assisting in the construction of certain infrastructure improvements associated with the Economic Development Property, with said improvements to be owned by CITY upon completion and acceptance thereof; and

WHEREAS, the COMPANY is opening a manufacturing operation in Norman, Oklahoma and intends to purchase Lot 3, Block 1 of the University North Park Corporate Center Section 2 for a set Retail Purchase Price of one million nine hundred twenty thousand dollars (\$1,920,000) from the Norman Economic Development Coalition ("NEDC") in order to construct facilities to house such operations (the "COMPANY Project"); and

WHEREAS, the COMPANY desires to have a first right of refusal on three (3) additional lots in University North Park Corporate Center Sections 1 and 2 from NEDC; and

WHEREAS, the COMPANY plans to hire at least fifty new employees over the next ten (10) years for the COMPANY Project with the average wage paying above the Cleveland County average wage; and

WHEREAS, the construction and operation of the Facility will entail a capital expenditure of approximately \$12,500,000 to be invested in machinery and equipment, and in the construction of the new building; and

WHEREAS, NEDC, through its ED TIF Notes, is willing to provide a discount of the retail purchase price to the COMPANY (the "Incentive"), with the expectation that the COMPANY endeavor to meet certain criteria relating to job creation and maintenance of jobs created; and

WHEREAS, NEDC, the NTIFA and the COMPANY desire to set forth their understanding and agreements as to the use of ED TIF Notes to assist with land acquisition costs, the obligation of the NTIFA to review and consider this Economic Development Performance Agreement, and the expectation of the COMPANY regarding job creation and long term commitment to the community;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. DEFINITIONS.

For the purposes of this Agreement, capitalized terms will have the same meaning as the definitions contained in the University North Park Economic Development Agreement dated 9/21/10 (Contract No. K- 1011-75) unless otherwise modified below:

“Economic Development Tracts” means that real property included in the University North Park Corporate Center Final Plat, Section I and Section 2, both of which were approved by the CITY on October 23, 2012.

“Fringe Benefits” means payments or benefits provided to the employee beyond their base wage. It includes, at a minimum, health insurance with at least 50% of the premium paid by the employer.

“Purchase and Infrastructure Note” means that financing transaction or transactions between NEDC and its Lender that provides funds for the purchase of the Economic Development Tracts and the construction of the infrastructure necessary to service the Economic Development Tracts.

“Maintain” means that the New Jobs created pursuant to the Incentive will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs, once initially filled, will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the COMPANY’s employment levels in connection with recruitment for open positions provided the period in which such position remains unfilled does not exceed three (3) months.

“Performance Date” means December 31, 2023. If the NTIFA and NEDC deems that good faith and reasonable efforts have been made and are being made by the COMPANY to achieve the Target, NEDC, in consultation with the NTIFA, may agree to extend the Performance Date by up to 12 months. If the Performance Date is extended, the NEDC shall send written notice of the extension to the COMPANY and NTIFA and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Quality Job” means new permanent full-time employment of an indefinite duration at the Facility for which fringe benefits are paid by the COMPANY for the employee during a period in which the COMPANY pays a “Qualifying Wage”. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the COMPANY’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Qualifying Wage” means the average wage per New Job that results in an average hourly rate of at least twenty-four dollars and four cents (\$24.04) per hour calculated on a quarterly basis by dividing the total payroll for New Jobs to be considered for incentive in that quarter by the total number of New Jobs to be considered for incentive in that quarter and then dividing that quotient by five hundred twenty hours (average annual wage of at least \$50,000).

“Target” means the COMPANY’s obligations to create and maintain at least 50 Quality Jobs at the Facility, all as of the Performance Date.

“UNP ED TIF Revenues” means ten percent (10%) of the Retail Sales Tax Increment collected from transactions within the UNP TIF District and set aside for economic development project costs pursuant to the 2009 NTIFA Bond Indenture.

Section 2. OBLIGATIONS OF COMPANY

- a. Purchase Economic Development Lot. Purchase from NEDC Lot 3, Block 1 of University North Park Corporate Center Section 2 (the "Site") at the Retail Purchase Price of \$1,920,000 (the "Retail Purchase Price") (approximately \$7.25 per square foot for approximately 264,845 sq. ft.). Of the total purchase price, Company will pay in cash at closing \$1,150,000. The remainder of the Retail Purchase Price of \$770,000 shall be satisfied with NEDC providing a discount to Company (the "Discount").
- b. Construct Advanced Manufacturing Center. Begin construction of an Advanced Manufacturing Center on the Site no later than eighteen (18) months after closing on the land sale, investing capital of approximately \$12,500,000 which will be invested in machinery and equipment, and in the construction of new buildings.
- c. Create New Quality Jobs. Create new employment opportunities with the Project by hiring at least fifty (50) new employees over the next ten (10) years that qualify as Quality Jobs as defined herein.
- d. Support Business Improvement District. Join in the Petition for a Business Improvement District (BID) to ensure maintenance obligations for Legacy Park, Legacy Trail and other common areas in the University North Park Development are met. Of the BID assessment attributable to the Site, COMPANY will contribute no more than \$900 annually through the Performance Date.
- e. Quality Job Incentive Payments. COMPANY recognizes that it may be entitled to certain Quality Job creation incentive payments pursuant to the Incentives Policy. COMPANY shall extend best good faith efforts to pursue grant of Quality Job creation incentives and shall forego any right to any such NTIFA Quality Job creation incentive payments and to the extent any such payments are made same shall be payable to NEDC.
- f. Provide Job Creation documentation. On a quarterly basis, provide appropriate documentation of compliance with Quality Job creation obligations under this Agreement.
- g. Allow for Private Annual Audit. Submit Company books and records for audit by an External Auditor for private review who will then report to the NTIFA and the NEDC regarding progress toward meeting the COMPANY'S obligations under this Agreement. The External Auditor shall be selected by NEDC with the concurrence of the General Manager of the NTIFA. NEDC shall pay the invoice of the External Auditor within thirty (30) days of submission of the invoice to the Company and NEDC. For this Project, the parties agree that the records necessary for private review would include payroll records to verify the accuracy of the OESC8 forms and pertinent additional records that confirm the COMPANY's good faith efforts to complete design of the facilities to be built in the Advanced Manufacturing Center, progress towards achieving a building

permit, and progress toward completion of construction of the facility and issuance of a Certificate of Occupancy.

Section 3. OBLIGATIONS OF NEDC

- a. Provide Discount on Retail Purchase Price for Site. Make available for purchase by COMPANY Lot 3, Block 1 of University North Park Corporate Center Section 2 (the "Site") at the purchase price of \$1,920,000 (approximately \$7.25 per square foot for approximately 264,845 sq. ft.). Of the total purchase price, Company will pay in cash at closing \$1,150,000. The remainder of the retail purchase price of \$770,000 shall be paid with NEDC providing the Discount to Company.
- b. Quality Job Incentive Payments. NEDC accepts any earned Quality Job incentive payments. NTIFA'S obligation under this Agreement shall be limited to a maximum payment for earned incentive of seven hundred seventy thousand dollars (\$770,000). In the event the Quality Job incentive payments from the NTIFA to NEDC are less than the NTIFA's maximum obligation by the Performance Date, then NEDC waives any right to reimbursement from the NTIFA TIF Note.
- c. First Right of Refusal. Within seven (7) days of receiving a written bona fide third party offer from a potential purchaser of Lot 2, Block 1 of University North Park Corporate Center Section 2, or Lot 7, Block 1 of University North Park Corporate Center Section 1, or Lot 2, Block 1 of University North Park Corporate Center Section 1, NEDC will notify COMPANY in writing of such offer and provide COMPANY seven (7) business days from the date of delivery of said notice to respond with a written offer to purchase the same property upon equal or better terms. If COMPANY desires to purchase the property in an amount and upon terms that are equal to or greater than the retail sales price offered by the other potential purchaser, then COMPANY shall execute and deliver a letter of intent to purchase said property to NEDC. Upon receipt of the letter of intent, NEDC and the COMPANY shall execute a purchase and sale agreement as soon as practical and close the sale of the property within thirty (30) days of delivery of the letter of intent. If either the letter of intent matching the third party offer is not timely delivered or the sale is not timely closed, then COMPANY will be automatically deemed to have waived all rights to exercise their first right of refusal on the subject property. NEDC will then be free to sell the parcel to other purchasers without restriction from COMPANY.
- d. BID Assessments for the Site. Any annual assessments made against the Site for the BID in excess of \$900 through the Performance Date shall be paid by NEDC, or others exclusive of COMPANY. Any BID payments made on behalf of COMPANY by NEDC may be funded through earned Quality Jobs payments assigned to NEDC as provided herein instead of applying said proceeds to the outstanding Purchase and Infrastructure Note noted in 3.f.2 or instead of applying

said proceeds to repayment of UNP TIF Economic Development funds as noted in 3.f.3.

- e. Provide Infrastructure for Economic Development Land. Fund or cause to be funded, through loan, grant, cash or combination thereof, the installation of public infrastructure required by, and to the extent of, the accepted final plat of the University North Park Corporate Center Section 2;
- f. Repayment of TIF ED Funds. In recognition that accumulated UNP ED TIF Revenues have been provided by the NTIFA to assist in financing the acquisition and public infrastructure for the UNP TIF Economic Development Properties as set out in 4.a below, NEDC agrees to the following:
 1. The General Manager of the NTIFA will be notified of any and all such indebtedness entered into by NEDC that raises the debt profile of the NEDC by more than \$25,000 on any occurrence;
 2. Funds received by NEDC, if any, in connection with the Economic Development Tracts in the form of land sales, grant funds from the EDA Grant, grant funds received from the State of Oklahoma in the form of Industrial Access Roadway Funding, assigned Quality Jobs incentive payments, or other third party grants, shall be applied first to the outstanding balance of the Purchase and Infrastructure Note; and
 3. Any fund proceeds from additional land sales from the Economic Development Tracts, after payment of all expenses and costs applicable to such sales (whether itemized on the closing settlement statement or outside of the settlement statement as related costs thereto), shall be paid to the NTIFA to reimburse the NTIFA for expenditures of UNP TIF ED funds.

Section 4. OBLIGATIONS OF THE NTIFA

- a. In accordance with: Resolutions R-1011-39 allow the use of \$694,203.69 plus earned interest to assist NEDC in financing the acquisition of thirty (30) acres of Economic Development property in the UNP TIF District; R-1213-64 allow use of 701,805.35 plus earned interest to assist NEDC in financing the acquisition of thirty-one and sixty-seven hundredths (31.67) acres of Economic Development property in the UNP TIF District; and R-1314-78 allow the use of accumulated TIF ED Revenues set aside under the prior Resolutions to assist NEDC in financing the public infrastructure improvements for the Economic Development property in the UNP TIF District.
- b. Honor Economic Development Notes released under this Agreement, as authorized by Resolution No. R-1011-40, and fund the Economic Development Notes with UNP ED TIF Revenues not already pledged, on an annual basis through the Performance Date. To pay to NEDC, by virtue of the Assignment

herein, the incentives through creation of New Jobs as defined herein and consistent with the NEDC New Job Creation Incentives Policy (the "Incentives Policy").

- c. NTIFA'S OBLIGATION UNDER THIS Agreement for quality job creation incentive payments as set out herein shall be limited to a maximum payment for earned incentive of seven hundred seventy thousand dollars (\$770,000).
- d. Seek City Council's authorization to allow the City Manager to waive bonding requirements for public infrastructure improvements on the Site to allow for concurrent construction of the public improvements with building improvements on the Site.
- e. Monitor progress of the COMPANY's obligations under this Agreement.

Section 5. INCENTIVE FOR CREATION OF NEW QUALITY JOBS

Eligibility for incentive for creation of New Jobs will be determined in accordance with the following chart.

Average Salary	Percent Credit	Quarterly Max per New Job	Yearly Maximum per New Job	Project Max per New Job (10 years)	
\$35,000	\$39,999	2.00%	\$175.00	\$700	\$7,000
\$40,000	\$44,999	2.05%	\$205.00	\$820	\$8,200
\$45,000	\$49,999	2.10%	\$236.25	\$945	\$9,450
\$50,000	\$54,999	2.15%	\$268.75	\$1,075	\$10,750
\$55,000	\$59,999	2.20%	\$302.50	\$1,210	\$12,100
\$60,000	\$64,999	2.25%	\$337.50	\$1,350	\$13,500
\$65,000	\$69,999	2.30%	\$373.75	\$1,495	\$14,950
\$70,000	\$74,999	2.35%	\$411.25	\$1,645	\$16,450
\$75,000	\$79,999	2.40%	\$450.00	\$1,800	\$18,000
\$80,000	\$84,999	2.45%	\$490.00	\$1,960	\$19,600
	\$85,000 +	2.50%	\$531.25	\$2,125	\$21,250

The COMPANY shall provide to the NTIFA and NEDC OESC8 forms filed with the Oklahoma Employment Security Commission that are submitted on a quarterly basis, and pertinent additional records that confirm the COMPANY's good faith efforts to complete design of the facilities to be built in the Advanced Manufacturing Center, progress towards achieving a building permit, and progress toward completion of construction of the facility and issuance of a Certificate of Occupancy to verify its progress in reaching the Target. Such progress reports will be provided on a quarterly basis, starting at the conclusion of the First Quarter for 2014 (March

31, 2014), and continuing each three months thereafter through the Performance Date. Quality Job incentives payments will be paid on an annual basis based on the number of New Jobs created following the NTIFA and NEDC'S acceptance and confirmation of the reports and data submitted by the COMPANY.

With each such quarterly report, the NTIFA and/or its designee will determine the amount of the Incentive due to NEDC based upon the table herein. Incentives shall not be unreasonably withheld and shall be disbursed to NEDC annually within thirty (30) days of acceptance and confirmation by the NTIFA and NEDC of the requirements set forth above. An annual report must be submitted to the NTIFA and NEDC at the conclusion of each calendar year.

Section 6. NEDC or NTIFA Right of Repurchase

- a. Users. The purpose of the Economic Development Tract is to allow for the development of the Property for economic development activities that focus on attracting and retaining enterprises that offer the community of Norman quality employment opportunities. NEDC believes the COMPANY will meet or exceed the objectives of the UNP TIF for the Economic Development Tract and the more specific Economic Development Criteria that exemplify the COMPANY as a provider of Quality Jobs. The COMPANY will satisfy the following criteria:
1. COMPANY begins construction of an Advanced Manufacturing Center on the Site no later than eighteen (18) months after closing on the land sale; and
 2. COMPANY will occupy the Advanced Manufacturing Center no later than thirty-six (36) months after closing the land sale as set out in 6.c below; and
 3. Retain the Company and its employees and industry within the municipal boundaries of Norman Oklahoma; and
 4. The Property will NOT be sold by the COMPANY for speculation or for the development of general offices for lease to the open market. Buildings planned for the Economic Development Tract must be planned as being at least 50% owner occupied at the time of move-in after a certificate of occupancy is issued by the City of Norman, and at least 75% owner occupied upon the date that is three (3) years after the certificate of occupancy is issued by the City of Norman.

The above shall be referred to herein as the "**Economic Development Criteria**". In order to enforce the criteria above upon the COMPANY, COMPANY agrees to be unconditionally bound by an option of NEDC or NTIFA to repurchase and repossess the Property from COMPANY, as put forth in Section 6.c below, in the event that COMPANY does not meet the objectives of the UNP TIF for the

Economic Development Tract and the more specific Economic Development Criteria, and/or does not timely commence business operations on the Property.

- b. Affiliated, Joint Purchaser. The COMPANY may be an individual person or entity that does not meet the Economic Development Criteria if such COMPANY is a close affiliate, insider, and owner of an entity that does meet the Economic Development Criteria, and the COMPANY is buying the Property solely for the purpose that the Property is to be used ONLY by the closely affiliated entity that meets the objectives of the UNP TIF for the Economic Development Tract and the more specific Economic Development Criteria. In addition, the COMPANY may be a combination of more than one unrelated entity that meets the objectives of the UNP TIF for the Economic Development Tract and the more specific Economic Development Criteria, such that in the event that the COMPANY's companies independent of each other do not need the entire area of the Property for each singular company, thus necessitating the purchase of the Property by more than one entity. In such a case, each separate entity acknowledges and agrees that each entity purchasing and using the Property shall be required to separately meet the objectives of the UNP TIF for the Economic Development Tract and the more specific Economic Development Criteria and in the event that either entity does not meet the objectives of the UNP TIF for the Economic Development Tract and the more specific Economic Development Criteria, then the entire Property may be subject to the Seller repurchasing the Property from all COMPANY entities.
- c. Timing of Development; COMPANY shall be obligated to improve, occupy, and staff the Property within a reasonable period of time, and to do so in conformance and fulfillment of at least the Economic Development Criteria put forth in section 6.a above. COMPANY shall be considered to have fulfilled COMPANY's commitment to timely develop and occupy the Property at such point in time when COMPANY has fulfilled the Economic Development Criteria put forth in section 6.a above, and COMPANY has completed all of the following:
- (1) Obtained a building permit for the COMPANY's improvements of a minimum 60,000 gross square foot facility to be placed on the Property, and which building permit shall be issued no later than eighteen (18) months after the date of Closing of the land purchase;
 - (2) Been issued a Certificate of Occupancy by the City of Norman for a minimum 60,000 gross square foot building improvements and interior finish spaces and which Certificate of Occupancy shall be issued no later than thirty-six (36) months after the date of Closing of the land purchase; and
- d. Repurchase Right: In the event that COMPANY fails to timely meet any of the above stated deadlines and criteria in Sections 6.a through 6.e, then at any time within ten (10) years after the date of closing NEDC or NTIFA shall have the unconditional right and standing option, but not the obligation, to immediately publicly market and advertise the Property for sale and/or lease to third parties,

and repurchase, repossess, and reacquire the Property from COMPANY. The NEDC or NTIFA must provide written intent to exercise the Option to COMPANY within one (1) year of discovering that the COMPANY has failed to meet a requirement within Section 6.a through 6.c, or 6.e. The rights of NEDC or NTIFA under the Option shall be memorialized on the record of the Property at Closing. In order to exercise the option set forth herein NEDC or NTIFA shall pay the COMPANY's purchase cost and construction costs in the Property as follows:

1. The Retail Purchase Price less the Discount by NEDC as put forth in this Agreement, together with
 2. The greater of Construction costs, including only labor and material of the building improvements to the Property by COMPANY through a general contractor and subcontractors thereunder, as such costs were accounted for as capital expense improvements on the Property or the Fair Market Value of all improvements to the Property as of the date written notice is given of NEDC or NTIFA's intent to exercise the option set forth above. The Fair Market Value as defined in this paragraph shall be determined first by agreement between the parties. If the parties are unable to agree on Fair Market Value of the improvements, then the parties shall select a qualified commercial appraiser, located in the Oklahoma City metro area, by mutual agreement to inspect and determine the Fair Market Value of all the improvements on the Property. If the parties are unable to agree on a single appraiser to determine Fair Market Value, then each party shall submit one name of qualified commercial appraiser in the Oklahoma City metro area, and the two appraisers shall then select a third appraiser, and the three appraisers shall determine the appraised value. If the three cannot agree on an appraised value then they shall each report their opinion as to value and the average of such reports shall be deemed the Fair Market Value. Fair Market Value shall be determined by considering such factors as construction cost, depreciation, current condition of the improvements, comparable sales of similar facilities in the areas, or other methods commonly accepted by commercial real estate appraisers within the State of Oklahoma.
- e. Option Upon Attempted Sale or Lease to Third Party. In the event that the Buyer intends to enter into any contract to sell, or deed to sell, or lease agreement for any part of the Property, or conveys or transfers any interests in the Property to any third party at any time within ten (10) years after Closing of the land purchase, NEDC or NTIFA shall have the same Option to re-purchase, reacquire and repossess the Property as put forth under Section 6.d above.

Section 7. NOTICES.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

If to the COMPANY, to:

IMMY, INC
2700 Technology Pl
Norman, OK 73071
Attention: Sean or Scott Bauman

With a copy to:

Goolsby, Proctor, Heefner & Gibbs, P.C.
701 North Broadway Avenue, Suite 400
Oklahoma City, OK 73102
Attention: Timothy A. Heefner, Esq.

If to the CITY, to:

CITY Manager
CITY of Norman, Oklahoma
P.O. Box 370
Norman, Oklahoma 73070

With a copy to:

CITY Attorney
CITY of Norman, Oklahoma
P.O. Box 370
Norman, Oklahoma 73070

If to the Authority to:

General Manager
Norman Tax Increment
Finance Authority
P.O. Box 370
Norman, Oklahoma 73070

With a copy to:

General Counsel
Norman Tax Increment
Finance Authority
P.O. Box 370
Norman, Oklahoma 73070

If to NEDC, to:

Executive Director
Norman Economic Development Coalition
710 Asp Avenue, Suite 100
Norman, Oklahoma 73069

with a copy to:

SP Rieger PLLC
Attn: Sean Paul Rieger, Esq.
136 Thompson Drive
Norman, OK 73069

Section 8. MISCELLANEOUS.

- a. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the Incentive and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective

successors and assigns. The COMPANY may not assign its rights and obligations under this Agreement without the prior written consent of the NTIFA.

- b. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the State of Oklahoma and shall be construed and enforced by the laws of the State of Oklahoma. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the District Court of Cleveland County, Oklahoma, and such litigation shall be brought only in such court.
- c. *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.
- d. *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(this space intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

Immuno Mycologics, Inc.
Company Name

By *Sean Bauman*
Name: Sean Bauman
Title: President & CEO
Date: 5-7-2014

Norman Economic Development Coalition

By *Donald M Wood*
Name: Donald M Wood
Title: Executive Director
Date: 1-30-14

Norman Tax Increment Finance Authority

By *Cindy Rosenthal*
Name: Cindy Rosenthal
Title: Chairman
Date: January 28, 2014

ATTEST:

Brenda Hall
Secretary



Approved as to form and legality this 27 day of January, 2014.

Kathryn L. Walker
Kathryn L. Walker, Assistant City Attorney

Baseline for Incentive Payments Calculated per 2013 4th Quarter Report at 29 Employees

<u>Year ; Quarter</u>	<u>Employees</u>	<u>Employees Gained</u>	<u>Qualifying Employees</u>	<u>Avg. Qualifying Salary Paid/Qtr.</u>	<u>Avg. Qualifying Salary Paid/Year</u>	<u>Allowable Credit</u>
2016 ; 1	47	18	12	\$12,559.52	\$ 50,238.08	2.15%
2016 ; 2	49	20	20	\$12,808.75	\$ 51,235.00	2.15%
2016; 3	55	26	18	\$12,573.60	\$ 50,294.39	2.15%
2016; 4	54	25	25	\$15,152.82	\$ 60,611.29	2.25%
Max Allowable/Job/ Qtr.	Incentive Calculation Job/Qtr.	Incentive Calculation Max/Job/Qtr.				
\$268.75	\$3,240.36	\$3,225.00				
\$268.75	\$5,507.76	\$5,375.00				
\$268.75	\$4,865.98	\$4,837.50				
\$337.50	\$8,523.46	\$8,437.50				
Sum:	\$22,137.56	\$21,875.00				

Based on the quarterly analysis of jobs created for Calendar Year 2016, applied to the *Incentive for Creation of New Quality Jobs Chart*, the maximized incentive payment is \$21,875.00.

IMMY Quality Job Incentive Earnings 2016 - Assigned to NEDC

Employee #	Total Wages Paid
1	\$23,769.24
2	\$21,320.52
3	\$14,797.42
4	\$12,851.34
5	\$11,538.48
6	\$11,495.88
7	\$10,624.38
8	\$9,418.92
9	\$8,978.05
10	\$8,842.02
11	\$8,582.10
12	\$8,495.88

Sum:	\$150,714.23
Avg. Qrt. Paid	\$12,559.52
Avg. Year Paid	\$50,238.08
Ave. hourly	\$24.15
1st Quarter 2016	

Employee #	Total Wages Paid
1	\$27,730.78
2	\$24,773.30
3	\$16,256.70
4	\$14,962.59
5	\$13,736.96
6	\$13,461.56
7	\$12,505.48
8	\$12,222.83
9	\$11,619.29
10	\$10,280.19
11	\$9,981.81
12	\$9,958.60
13	\$9,876.36
14	\$9,847.20
16	\$9,612.35
17	\$9,339.32
18	\$9,181.91
19	\$9,144.20
20	\$8,874.80

Sum:	\$243,366.23
Avg. Qrt. Paid	\$12,808.75
Avg. Year Paid	\$51,235.00
Ave. hourly	\$24.63
2nd Quarter 2016	

Employee #	Total Wages Paid
1	\$24,720.00
2	\$22,812.54
3	\$15,145.56
4	\$14,672.80
5	\$13,414.79
6	\$13,325.64
7	\$12,692.28
8	\$11,453.28
9	\$10,935.03
10	\$10,779.24
11	\$10,627.32
12	\$10,417.37
13	\$9,810.77
14	\$9,704.88
15	\$9,559.12
16	\$9,118.60
17	\$8,607.13
18	\$8,528.42

Sum:	\$226,324.77
Avg. Qrt. Paid	\$12,573.60
Avg. Year Paid	\$50,294.39
Ave. hourly	\$24.18
3rd Quarter 2016	

Employee #	Total Wages Paid
1	\$32,795.52
2	\$30,501.76
3	\$20,180.82
4	\$18,415.71
5	\$17,812.56
6	\$17,364.90
7	\$17,346.39
8	\$16,144.15
9	\$16,134.65
10	\$15,130.52
11	\$14,699.22
12	\$13,656.12
13	\$13,467.09
14	\$13,367.48
15	\$12,536.32
16	\$12,401.78
17	\$11,682.55
18	\$11,392.89
19	\$11,167.84
20	\$11,020.45
21	\$10,768.73
22	\$10,363.15
23	\$10,320.93
24	\$10,281.67
25	\$9,867.34

Sum:	\$378,820.54
Avg. Qrt. Paid	\$15,152.82
Avg. Year Paid	\$60,611.29
Ave. hourly	\$29.14
4th Quarter 2016	

IMMY Quality Job Incentive Projections - Assigned to Norman Economic Development Coalition

Incentive Commitment - Dev Agr #6										5 employees per year - 50 employees				97 jobs projections			
Year	No. of New Jobs	Cumulative Jobs	Cumulative new jobs achieved	Target Qualifying Ave. Salary	Target Added payrolls per year	Target Cumulative added payrolls	Cumulative added payrolls achieved	Target Incentive per year	Target Cumulative Incentive	Achieved Incentive per year	Cumulative Incentive Achieved	Incentive per year	Cumulative Incentive				
2014	5	5	5	\$50,000	\$250,000	\$250,000	\$93,028	\$5,375	\$5,375	\$2,150	\$2,150	\$7,475	\$7,475				
2015	5	10	18	\$50,000	\$250,000	\$500,000	\$470,560	\$5,375	\$10,750	\$14,925	\$17,075	\$7,475	\$14,950				
2016	5	15	25	\$50,000	\$250,000	\$750,000	\$918,838	\$5,375	\$16,125	\$21,875	\$38,950	\$10,465	\$25,415				
2017	5	20		\$50,000	\$250,000	\$1,000,000		\$5,375	\$21,500			\$10,465	\$55,315				
2018	5	25		\$50,000	\$250,000	\$1,250,000		\$5,375	\$26,875			\$10,465	\$85,215				
2019	5	30		\$50,000	\$250,000	\$1,500,000		\$5,375	\$32,250			\$10,465	\$92,690				
2020	5	35		\$50,000	\$250,000	\$1,750,000		\$5,375	\$37,625			\$10,465	\$100,165				
2021	5	40		\$50,000	\$250,000	\$2,000,000		\$5,375	\$43,000			\$10,465	\$115,115				
2022	5	45		\$50,000	\$250,000	\$2,250,000		\$5,375	\$48,375			\$10,465	\$130,065				
2023	5	50		\$50,000	\$250,000	\$2,500,000		\$5,375	\$53,750			\$10,465	\$145,015				
									\$295,625		\$38,950.00		\$771,420				