DATE: November 9, 2018

TO: Mayor and Council members

FROM: Jeff Harley Bryant City Attorney

SUBJECT: University North Park TIF – Existing Obligations

BACKGROUND:

It has been requested that background and a historical perspective be provided for the UNP TIF Project, as well as a more full discussion of the existing obligations that still exist under the Development Agreements previously approved by City Council. The information set out below has been taken, in a large part, from advisory memorandum that has been presented to Council when considering the Project Plan, Development Agreements, and Project Plan amendments. A compilation of the Council approved Project Plan and Development Agreements is also available for review.

The UNP TIF District was approved by City Council after a citizen committee process where sixteen Norman Citizens were appointed on June 28, 2005, to review a proposal made by representatives of OU and developers of the Project. Citizens serving on the committee included the following: Doug Cubberley (co-chair); Marc Nuttle (co-chair); Trey Bates; Joyce Collard; John Hancock; Nick Hathaway; Steve Lucas; Gene McKown; Clark Mitchell; Sharon Parker; Gail Poole; Sean Rieger; Richard Ryan; Bob Thompson (former Mayor); Chuck Thompson; and Lyntha Wesner. The Citizen Committee met intensively for two months and submitted its 10 page report to City Council in September of 2005. (Citizen Committee Report)

Following citizen review and vetting of the proposal, the proposed Project Plan was submitted to a Statutory Review Committee as required by Oklahoma Statutes to allow the potentially affected ad valorem taxing jurisdictions to make recommendations regarding the proposal. The Committee included ad valorem taxing jurisdictions (Norman Public Schools, Cleveland County, County Health Department, Moore-Norman Technology Center, and the Pioneer Library System), a member of the Planning Commission, and the Mayor, as well as three citizen members elected at large. In 2006 those elected at large citizens were Gene McKown, Marc Nuttle, and Chuck Thompson. The Statutory Review Committee recommended creation of a twenty-five (25) year development plan that allowed investment of up to $54.75 million in incremental revenues that was projected to entice $500 million of private investment which was projected to generate additional tax revenues for the City and other taxing jurisdictions of $1 million annually over the near term and up to $20 million annually over the life of the project. (see Economic Impact Analysis). The economic projections were also performed by Dr. Lex Holmes of the University of Oklahoma. (See Holmes report)

The components of the UNP Project Plan that were anticipated to generate this level of economic development in Norman included: Traffic and Roadway improvements to serve the Project with incremental revenue of up to $11.55 million assisting in those costs; a Hotel and Conference Center with up to $16.5 million of incremental revenue assisting with those costs; a

public park with public art, and enhanced landscaping, later built as Legacy Park with up to $8.25 million of incremental revenue assisting with those costs; a Regional Draw retail component referred to as a Lifestyle Center was allotted up to $8.25 million of incremental revenue for retail incentives; and an Economic Development component to assist the Norman Economic Development Coalition (NEDC) in its efforts to bring quality jobs to Norman was allotted up to $8.25 million of incremental revenue assisting with those costs. (see Original Project Plan)
The retail incentive component was extensively discussed because the City's primary revenue source to fund public safety and general operations comes from sales tax. There was concern expressed about the development creating competition for existing Norman businesses. There was concern expressed about Norman overall losing its "retail pull factor" due to the cities of Ardmore and Moore aggressively enticing retail developments to their cities. A major focus on the Citizen Committee report was to create a Regional draw destination component. (See Citizen Committee Report).

The Planning Commission approved the Project Plan as consistent with the City's Comprehensive Plan. The PUD Zoning approved for the 585 acre tract included a detailed Preliminary Plat for land south of Rock Creek Road (primarily retail areas) and a more generalized development plan with ranges of possible uses for land north of Rock Creek Road (nonretail). The Statutory Review Committee recommended the Project Plan to the City Council, and on May 23, 2006, after an unsuccessful attempt to amend the proposed Project Plan, the City Council adopted the Project Plan Ordinance by a 5-4 vote.

The goals and objectives of the Project Plan have been implemented over the last twelve years by a series of Development Agreements, financings, and actions by City Council. The collective voices of the City Council members, as policy makers for the City, approve final agreements. Day to day negotiations, contract administration and implementation is assigned to the City Manager (see Project Plan). Development Agreements and policy decisions were made with necessary City Council consideration and approval after properly posted public meetings where citizens were also allowed to voice their opinions. Any representation otherwise that the City Attorney, City Manager, or smaller groups of City Council members made backdoor, smoke-filled room decisions, including the "Grand Bargain" rhetoric is simply not true.

Since its adoption by the City Council on May 23, 2006, UNP TIF District through 2017, approximately $30 million of incremental revenues have been directly apportioned to the Project ***to fund public improvements*** that include streets, intersections, traffic signals, Legacy Park, and Rock Creek Overpass, or to assist NEDC with Quality Job recruitment. This public investment has resulted in over $230 million in private investment which has resulted in the generation of over $74.8 million in gross sales taxes. Of that $44.23 million has gone to the City's General Fund as follows: $9.6 million for Public Safety Sales Tax (PSST); $2.6 million to the Norman Forward Fund; $10.2 million to the General Fund due to adjustments accounting for businesses located elsewhere in the City that relocated into the Increment District; $.8

million to the General Fund due to annualized growth rate calculations accounted for in the Increment District; $21 million from the direct allocation of 40% of the sales tax increment to the General Fund; and $30.6 million to the incremental sales tax revenue allocation available for public infrastructure and project costs in the Increment District.

Additional ad valorem tax incremental collections for this time period were over $20 million of which $10 million was available to fund Project Costs, and $10 million was retained by the ad valorem taxing jurisdictions. This sharing of ad valorem revenues generated in the increment district with the ad valorem taxing jurisdictions was a unique approach when compared to other TIFs utilized in the state, as most of those capture 100% of the ad valorem increment for Project Costs. In addition, approximately $1.1 million has been generated by the Project through Hotel/Motel tax revenue, which specifically benefits arts, public parks, and tourism.

This level of tax generation was accomplished through collaboration, by the City working together with the property owner and the developer to implement the vision of the Project Plan as recommended by the Citizen Committee, as recommended by the Statutory TIF Committee, and as approved by City Council through a series of Development Agreements.

Construction of the Super Target was already underway when the Project Plan was adopted. With the adoption of the Project Plan, several implementation processes and interrelated matters were set into motion. On June 13, 2006, the City Council approved an agreement for the purchase, at ½ price, of approximately 148 acres of property formerly owned by Ruby Grant for the development of a public park located west of I-35. A condition precedent to the purchase of the park land included the adoption of a master operating agreement and a traffic improvement agreement for the North Park TIF. On July 11, 2006, the Council adopted a Trust Indenture to establish a public trust to be able to issue revenue bonds when appropriate. New development activity for North Park TIF began occuring, including the announcement of a plan to begin construction of an Embassy Suites Hotel and companion Conference Center in October of 2006.

Master Operating Agreement & Development Agreement No. 1 - approved 8/22/2006

The Master Operating Agreement is an umbrella agreement that establishes the relationship of the parties and sets out certain commitments and responsibilities. Development Agreement No. 1 (The Traffic Improvement Agreement) is a more specific development agreement setting out the commitments and responsibilities of the parties in relation to the initial development activities, primarily addressing the traffic and roadway improvements.

The City Council held a retreat on June 20, 2006 to discuss their ideas concerning the Master Operating Agreement and the Traffic Improvement Agreement. From that point, many hours were spent with legal counsel in a relatively short timeframe crafting these agreements. Although each party to the agreements certainly had distinct interests, in a broad sense, the parties' interests were the same – the success of the North Park TIF.

Much of the work on the agreements was collaborative with representatives of the City, Developer, OU Foundation and its subsidiary, and OU. Following this intense effort, Council members met with City Legal Counsel in small groups the week of July 17, 2006 to review the draft agreements in detail and answer questions. Additional work and drafting occurred in the early part of August 2006 based on Council feedback to clarify additional parts of the agreements. Key parts of the agreements are summarized below.

Master Operating Agreement.
The parties to the agreement are the City of Norman, University North Park, LLC (Landowner), and University Town Center, LLC (Developer) as primary parties. The OU Foundation and the University of Oklahoma are recognized as supporting parties to the agreement. The City's obligations in partnering in the process are to review and approve plans, financings, design guidelines, budgets, establish a public trust, review and approve construction contracts (§7). The Developer & UNP obligations in partnering in the process are to prepare and submit Master Plans, PUD amendments, Design Guidelines, prepare and submit plans for public facilities, assist with financing where appropriate, and administration responsibility where appropriate (§8). Key concepts from the Project Plan incorporated into the agreement include:

- recognizing covenants that run with the land regarding payment in lieu of *ad valorem* taxes in the increment district by an owner or user of property that would otherwise be exempt from such taxes;

- defining the sales tax increment from the TIF District as excluding dedicated sales tax revenues such as the ½ percent temporary sales tax for sewer improvements; later the Public Safety Sales Tax and the NORMAN FORWARD Sales tax;

- setting out the obligations and responsibilities of the City, Developer and UNP in the TIF development process and in operation of the TIF District;

- recognition of the commitment of UNP to fund or cause to be available for funding amounts sufficient to provide financing of the Initial Project Activity Costs, including the contingency related thereto, in a principal amount not-to-exceed $13,475,000;

- recognition that a second development priority may be the Conference Center to be constructed on approximately eleven acres of land to be provided by the developer at no cost to the City;

- formalizing OU's statement of support for the Conference Center through reasonable efforts to schedule conferences;

- inclusion of a general design and budget for Legacy Park which includes: approximately eight (8) acre park area dedicated to the City at no cost; a water feature with restaurant space connecting to this feature and, to the extent feasible, minimize parking; additional green space interconnecting Legacy Park to Legacy Trail to the Hotel Conference Center area increasing total landscaped area to approximately ten (10) acres, all subject to a more detailed Legacy Park Development Agreement that adheres to these concepts;

- Commitment by the Developer to fund or cause to be available for funding amounts sufficient to provide financing for Primary Legacy Park Facilities Construction and Public Art up to $5,750,000;

- Recognizing the desire for an Oversight Committee to make recommendations primarily concerning the use of Tax Increment revenues and expenditures for Legacy Park Project Costs, Lifestyle Center Project Costs, and Economic Development Project Costs;

- General development concepts and standards for the Lifestyle Center including eligibility criteria for TIF related incentives consistent with attracting retail shops that would create a regional draw for potential shoppers;

- Outlining parameters for the availability of property within the Increment District for non-retail businesses contemplating the availability of up to one hundred (100) acres of land located in the north half of University North Park to be made available for economic development purposes, including sixty (60) acres at well below market rates and an additional forty (40) acres available at rates at least as favorable as extended to other purchasers of property in the north ½ of the increment district;

- Recognizing and reaffirming the commitment of the OU Foundation to transfer to the City approximately 148 acres of property commonly known as the Ruby Grant property for the establishment of a community park on the west side of Interstate 35;

- Commitment to consider intermodal transportation options within the Increment District including the commitment by OU to provide a public right-of-way across its property adjacent to University North Park sufficient in nature to support a commuter rail spur from the existing Burlington Northern Santa Fe rail lines east of the Project area;

- Commitment for up to an additional four (4) acres in the north 1/2 of the increment district to be developed in the master plan as open space in conjunction with non retail business development.

The Master Operating Agreement addressed all the concerns expressed by City Council during the retreat held in June 2006 as well as addressed additional comments or concerns expressed by individual Council members.

Development Agreement #1 - Initial Project Activities

Development Agreement #1 set out the commitments and responsibilities of the parties in relation to the initial development activities, primarily addressing the Traffic and Roadway improvements. The parties to this agreement are the City of Norman, the Norman Tax Increment Finance Authority, University North Park, LLC, and University Town Center, LLC. This document takes the Project Plan concepts relative to the initial project activity costs and the contemplated traffic and roadway improvements and formalizes them. Exhibit A incorporates a project budget that was reviewed by City Council at a study session in January of 2006 which ultimately formed the basis of the traffic and roadway improvement provision in the Project Plan. The TIF District responsibility for the traffic and roadway improvements is limited to $11,550,000. The Developer and UNP will be responsible for all expenditures to accomplish the plan of traffic and roadway improvements in excess of that amount. Other key provisions include the following:

- Developer's commitment to design and construct public roadway improvements subject to City review and approval;

- Developer's commitment to secure all requisite governmental approvals including ODOT and FHWA;

- Developer & UNP's obligation to obtain all necessary right of way including a budget line item of up to $400,000 to secure right of way from Southwestern Wire on the northwestern part of the increment district just south of Tecumseh Road with the proviso that moneys requested under this line item will only be paid from available funds, if any, after payment of all other eligible Traffic and Roadway Improvements Project Costs;

- Recognition of the importance of Competitive Bidding including disallowance for reimbursement from TIF funds for traffic and roadway improvements primarily along Robinson Street that were started prior to adoption of the TIF District, provided that budgeted dollar amounts for those improvements, less a 10% penalty, may be available to the developer in the form of development assistance after all other scheduled traffic improvements have been completed;

- Reaffirming the UNP commitment to fund or cause to be available for funding amounts sufficient to provide financing for the Initial Project Activity Costs.

- Requiring a letter of credit of the Developer and UNP of $2,400,000.00 paid to the City or Authority if the Developer has not reached a stage of shell completion of at least 250,000 square feet within the Lifestyle Center which meet the criteria of the Design Guidelines on or before January 1, 2016;

Development Agreement No. 1 addressed all the concerns expressed by City Council during the retreat held in June 2006 as well as addresses additional comments or concerns expressed in a more recent detailed review of the provisions with individual Council members.

Master Financing Agreement – approved 2/13/2007

The Master Financing Agreement addresses the ability of TIF revenues to adequately fund, or make marketable, debt issued to achieve some of the infrastructural goals set forth in the Project Plan. The concept of TIF financing is to fund public improvements in a specified district from increases or increments of revenue that are generated from the development activity. In UNP, TIF increments are generated from both increases in ad valorem taxes due to development activities and increases in sales tax receipts due to increases in retail activities. TIF improvements may be made either on a "pay as you go" basis, which requires the development to wait until sufficient TIF revenues have accumulated or through TIF debt financing. With TIF debt financing, municipal bonds will be issued with the identified revenue source to repay the bonds being TIF Revenues. TIF debt financing allows certain Project Plan improvements to move forward prior to TIF Revenues accumulating to a sufficient level to accomplish that particular improvement.

Three integral pieces of the Project Plan in 2007 that may require debt financing included: the traffic and roadway improvements; Legacy Park; and the Conference Center. Because TIF Revenues require some projection of what the increments may be, concern was expressed that debt issued for some of the Project Plan components that were important to the City would not be marketable. In response to the concern, it was recommended that the City develop a Master Financing Agreement to ensure there was placement for all the potential debt issuance. This is designed to ensure that all of the components of the TIF project are funded, particularly the pieces of interest to the City (traffic improvements, Legacy Park, and the Conference Center).

The Master Financing Agreement is an agreement between The City of Norman, the Norman Tax Increment Finance Authority, John Q. Hammons ("JQH"), University Town Center, University North Park, and the OU Foundation. The OU Foundation agreed to purchase, cause to be purchased, or guarantee all TIF bonds issued for Initial Project Activity costs (traffic and roadway improvements) at no cost to the City and for Legacy Park costs at mutually acceptable and commercially reasonable terms.

JQH pledged to construct the Hotel/Conference Center complex without initial City funding. Upon completion of construction, the City pledged to purchase the Conference Center at a maximum price of $15 million, even though the construction cost was estimated to be $20 million (25% discount). Under this agreement, upon the Council's vote to purchase the Conference Center, TIF bonds will be issued for up to $15 million plus interest and financing costs. The City will also issue additional bonds (for costs in excess of $15 million) secured by the Conference Center lease payments made by JQH (such bonds not to be paid from TIF revenues). TIF bonds for the Conference Center will be issued only if the City approves the purchase of the Conference Center and the Authority is able to sell its TIF bonds to a purchaser at reasonable terms and conditions.

The Master Financing Agreement insures there is a funding source for municipal bonds issued for the traffic and roadway improvements and the Legacy Park improvements. JQH's commitment to build the Conference Center without requiring debt issuance until its completion provides a funding source for construction of the Hotel/Conference Center complex. The Master Financing Agreement addresses the Council's concerns that a funding source be available for the three major elements of the project plan: traffic and roadway improvements; Legacy Park; and the Hotel/Conference Center complex. Contract number K-0607-131 (Master Financing Agreement) was approved by City Council on February 13, 2007.

<u>Development Agreement No. 2 – Hotel / Conference Center</u> – approved 2/13/2007
In August of 2006, the City Council authorized a feasibility study regarding the Hotel/Conference Center proposal being made by John Q. Hammons. The feasibility study was completed in September by HVS International. A study session on the feasibility study was held in October 2006. City legal staff met with Council members in small groups in November to gain Council input concerning the negotiation of the Conference Center related agreements. City legal staff met again with Council in small groups to discuss negotiation progress in January 2007. Development Agreement No. 2 outlined the responsibilities and obligations related to the construction of the Hotel and Conference Center complex. Attached to Development Agreement No. 2, are related agreements dealing with site acquisition and the operation of the Conference Center. These agreements are the land transfer agreement providing the City land upon which the Conference Center will be built, Conference Center Lease, the Buy-Sell Agreement, the City of Norman Conference Center Booking Policy, and a Guaranty Agreement.

The Development Agreement for the Hotel Conference Center Complex required John Q. Hammons Hotels ("JQH") to build a first class hotel (estimated cost of $30 million) and a Conference Center (originally estimated to cost $20 million). The City's participation was proposed at 75% or a maximum of $15 million. It was contemplated that the entire construction cost would be financed through the issuance of municipal bonds. Up to $15 million of the bonds, plus related issuance costs, were to be paid from revenues generated from the TIF District (50% of ad valorem increments and 50% of sales tax increments). The remainder of the municipal bonds (approximately 25% of the construction costs) would be paid from conference center lease payments paid by JQH.

In small group meetings in November, Council raised several issues. Council wanted to know whether John Q. Hammons Hotels ("JQH") would increase his financial stake in the Conference Center; whether JQH would be willing to build the Conference Center without any City participation; and whether JQH would consider a buy-back or claw-back provision whereby the

City would provide $15 million upfront for construction, and JQH would pay the City back 5-7 years after the Conference Center opened.

After additional negotiation, JQH agreed to increase his financial stake. To help alleviate concerns that the Conference Center proposed was not the right size for this market, JQH agreed to assume two risks. First, JQH agreed to take the construction risk of the Conference Center. That is, while recognizing the cost of the Conference Center may be more than anticipated, at that time estimated at $23 to $24 million, JQH agreed to accept the construction risk and leave the City's contribution capped at $15 million. The increased construction cost and leaving the City's financial participation capped at $15 million raises JQH's participation level in the project to 37%, and reducing the City's cost participation to 63%. In addition, as an illustration of his commitment that this Conference Center project is the right size at the right time for Norman, JQH has agreed to provide his own construction financing for the project. That is, JQH will build the Conference Center without any money from the City. Upon the completion of the Conference Center construction, Development Agreement No. 2 expresses the City's intention to purchase the Conference Center for a maximum of $15 million should Council at that time approve the issuance of TIF bonds for said purchase. While JQH is willing to take the construction risk on building the Conference Center, he does expect the City to partner in this effort with the purchase of the Conference Center at the end of construction.

Regarding a buy-back or claw-back provision, JQH was clear that his request to partner with the City in this effort was not the result of an inability to secure financing to construct the Conference Center. Rather, JQH is interested in partnering with the City to provide a community owned Conference Center that could be operated cooperatively to ensure its success. JQH was willing, however, to enter into a buy-sell agreement to address the concerns of Council. The buy-sell agreement is discussed below.

<u>Transfer of land for Conference Center</u>: An important aspect related to the Conference Center development is the donation of the property on which the Conference Center is to be built. University Town Center was willing to donate the property for the Conference Center, which is approximately 12 acres, to the City so that the Conference Center can be built. The value of this donation has been estimated from $654,400 ($1.25 per square foot) to $2,224,960 ($4.25 per square foot). It is important to note, however, that should the City decline to purchase the Conference Center at completion of construction, then the City is required under Development Agreement No. 2 to transfer said property to JQH at no cost.

<u>Conference Center Lease:</u> The Conference Center Lease outlines the responsibilities of the City as owner of the Conference Center (subject to City purchase of the Conference Center) and JQH as operator of the Conference Center upon its opening.

As stated above, once construction of the Conference Center is completed and the City purchases the Conference Center, JQH will begin operating the Center according to the Lease provisions. JQH will make a semiannual rent payment, equal to his portion of the overall debt issued for the Conference Center amortized over a twenty year term. JQH will bear the responsibility for wear and tear maintenance.

Regarding long term maintenance issues, a similar project in Frisco, Texas, placed that responsibility on the city. The feasibility study conducted by HVS International recommended a $200,000 yearly deposit for such long term capital maintenance expenditures to cover primarily replacement of the roof and the HVAC system when needed. Through additional negotiation, JQH has agreed to also bear the responsibility for capital maintenance by making an annual payment of $200,000 to a capital maintenance fund until such time as an adequate balance is achieved to cover replacement of those items. Once that balance is achieved, additional contributions will be made as needed to maintain a balance sufficient to cover those two primary capital maintenance items.

Finally, although the Conference Center will be City owned, JQH has agreed to pay a yearly fee in lieu of ad valorem taxes, 50% of which will help fund the TIF. This provision is consistent with the development covenants and the Master Operating Agreement requiring such payments.

Buy-Sell Agreement: As previously stated, the Buy-Sell Agreement was negotiated as an alternative to a buy-back or claw-back provision. Essentially, the Buy-Sell Agreement is a right of first refusal. That is, should JQH or the City desire to end their participation in the Hotel/Conference Center complex, the other party will have an option to purchase the interest of the party wishing to end its participation.

Booking Policy: The Booking Policy outlines the policies by which events will be booked at the City of Norman Conference Center. Of course, any event may be booked if the Center space desired is not already reserved. The Booking Policy covers those occasions when two events desire the space for the same date(s). The Booking Policy prioritizes these events according to several criteria, including economic impact on the City of Norman as a whole, length of event, number of event attendees, etc. Under the Booking Policy, Conference Center management bears the responsibility for booking events. However, a cooperative relationship between Center management and the Norman Convention and Visitor's Bureau is recognized as being beneficial to the operation of the Center and is provided for in the Booking Policy.

Guaranty Agreement: Development Agreement No. 2 and the other related agreements discussed above are between the City and a company set up by JQH for this development called JQH – Norman Development, LLC. Under the Guaranty Agreement, John Q. Hammons, as Trustee of the John Q. Hammons Revocable Trust dated December 28, 1989, as Amended and Restated, is guaranteeing that JQH – Norman Development, LLC will follow its obligations under Development Agreement No. 2 and the other related agreements.

To summarize, Development Agreement No. 2 and the related attached agreements provided a framework in which the Hotel/Conference Center Complex contemplated by the Project Plan for the University North Park TIF could move forward. The agreements placed additional risk on JQH, and increased JQH financial participation in the project to 37% of construction costs or all amounts over $15 million. JQH does ask for the City's commitment to purchase the Conference Center at the end of construction for $15 million. JQH has agreed to fund a capital maintenance fund at the rate of $200,000 per year to cover the primary capital maintenance items of roof and HVAC replacement. It is felt the agreements address concerns expressed by Council when negotiation of the agreements began.

Amendment No. 1 to Development Agreement No. 2
(land transfer with reversion) – approved 06/12/2007
After approval of Development Agreement No. 2, JQH began constructing the Hotel Conference Center Project. JQH began experiencing difficulties obtaining financing for construction costs because of the unique structure of the agreement between the City and JQH. Development Agreement No. 2 provided for the donation of the Conference Center site from University Town Center, LLC to the City of Norman conditioned upon the City's acceptance and purchase of the Conference Center once construction was completed. Should the City decline to purchase the Conference Center upon completion of construction, the agreements provided that the Conference Center site would be transferred to John Q. Hammons ("JQH") at no cost. To assist in obtaining private financing to construct the Conference Center, John Q. Hammons has requested an amendment to Development Agreement #2 and accompanying Exhibit "B" – Conference Center Lease. Essentially, the proposed amendments would require the City to transfer the Conference Center site, at no cost, to JQH, with a reversion back to the City, at no cost, upon the City's purchase of the Conference Center after construction is completed. This will enable the financier to put a lien on the property to secure the construction loan. After construction, should the City purchase the Conference Center, the lien will be released and the property will be transferred to the City at the time of purchase. The amendment does not harm the City's interest and was proposed to help assist in the completion of the Hotel Conference Center complex as envisioned. City Council approved the amendment.

Development Agreement No. 3 – Legacy Park approved 10/23/2007
On August 21, 2007, a presentation of the preliminary Legacy Park design was made to Council by Scott Howard, with Howard-Fairbairn Site Design, Inc. The design was presented to the TIF Oversight Committee, as required under the Project Plan, and was well received. Staff first presented Development Agreement No. 3 to Council in a Study Session on October 2, 2007. Development Agreement No. 3 outlines the responsibilities and obligations related to the construction of Legacy Park. Under the Project Plan, Legacy Park was to:

> "to create Legacy Park, with appropriate memorials, a substantial lake/water feature, destination restaurants and boutique shops, together with an extension of the Legacy Trail system, quality public art, trees, and extensive landscaping

> throughout University North Park in excess of that required by the PUD at locations necessary to screen the project from I-35 and at other locations… together with an endowment to facilitate permanent replacement and maintenance."

The design by Scott Howard reflects this concept. Under the agreement, the Developer will donate the park land to the City and the City will construct the park. The City agrees to bond finance or otherwise make available funding for park construction, enhanced landscaping (park landscaping as well as landscaping throughout the development), public art, and development assistance. The maximum amount of TIF funding available for the Legacy Park project is $8,250,000.

Originally, the Legacy Park project was envisioned to be constructed after the Lifestyle Center construction was well underway. The Project Plan provided that funds would not be available for Legacy Park construction until 250,000 square feet of Lifestyle Center space was constructed to shell completion. Because of the City's desire to construct Legacy Park sooner rather than later, this contract delays the condition in the Project Plan for Lifestyle Center construction and instead will require the Developer to reimburse the City for park construction costs and interest for debt issuance for park construction costs should they fail to construct 250,000 square feet of the Lifestyle Center by January 1, 2016. Should the Developer be required to reimburse the City for park construction costs and applicable interest, the reimbursement is required to go towards retirement of the debt for Legacy Park. The Developer will also be required to turn over the Maintenance Endowment Fund, as well as maintenance duties, to the City. It should also be noted that the City will be required to follow its obligations under the Project Plan regarding Lifestyle Center costs before the Developer can be required to reimburse the City for park construction costs and applicable interest. Accelerating the construction of Legacy Park benefits both the City and the retail development in the UNP area.

Under this agreement, the University North Park Public Art Committee will be formed with the purpose of making recommendations to Council about public art to be placed in the Legacy Park area. The committee is designed to be representative of residents of the City of Norman, in addition to the parties to this agreement. The Committee will be responsible for establishing a Public Art Endowment for the purpose of supplementing the funding provided under this agreement ($1.5 million) for the acquisition, placement, and maintenance of public art.

Maintenance of the park will be handled by the Developer. The Developer will be responsible for establishing a Maintenance Endowment Fund to ensure long term maintenance and replacement in the Park will be funded adequately. The City will provide Development Assistance to the Developer, as permitted under the Local Development Act, in an amount matching the Developer's contribution (up to $900,000) to the Maintenance Endowment Fund.

Development Agreement No. 4 Providing Funding Commitments for a Rock Creek Road Overpass of Interstate 35 and Further Enhancing Development in the Norman UNP Project – approved September 9, 2008

Staff brought forward for Council consideration Development Agreement No. 4 for the Rock Creek Road Overpass on May 27, 2008 and again at a Special Meeting on June 5, 2008. The item was postponed and on June 24, 2008, Council opted to send Project Plan amendments, including the funding gap for the Rock Creek Overpass project as a TIF traffic and roadway improvement, to the Statutory TIF Committee for their consideration. The amendments, as approved by the Planning Commission and the Statutory TIF Review Committee, were presented to Council for consideration on August 26, 2008, after two public hearings on the amendments. Council adopted Ordinance No. O-0809-8 amending the Project Plan to include, among other things, the Rock Creek Road Overpass project as a Traffic and Roadway Improvement and formalizing the reallocation of funding authorization from the Conference Center category to the Traffic and Roadway Improvements category for the purpose of funding $7.75 million of the overpass costs. Development Agreement No. 4 also solidifies the City's commitment to the overpass project and provides for various commitments from the other parties to ensure the appropriate level of commitment to the Project Plan as envisioned.

On June 24, 2008 Mayor Rosenthal also appointed a Drafting Committee to examine Development Agreement No. 4 and identify areas of the contract where further negotiation might be needed. Councilmembers Ezzell, Cubberley, and Dillingham, all attorneys as well, met with staff in early July 2008 and it was determined that it would be preferable to refrain from any acceleration in developer assistance for projects completed prior to formation of the TIF until the reserve fund and capitalized interest is met for the first UNP TIF financing. No other changes to the Agreement were recommended by the committee.

City staff began working on the Rock Creek overpass funding concept in the summer of 2008. It was apparent that the overpass would not only be beneficial to the City as a whole in terms of relieving traffic woes, particularly on Robinson Street, but also to the TIF development. The concept staff had been working with provided for various mechanisms for funding. The total cost of the overpass was estimated to be around $13.6 million. ODOT agreed to provide $4 million for the overpass construction. Another $1.07 million could come from the Federal Safe Accountable Flexible Efficient Transportation Equity Act (FSAFETEA) funding. The "west leg" of Rock Creek Road connecting to the overpass was to be paid from the City's Recoupment Fund. Finally, the remaining amount, around $7.75 million was to be paid for by an Assessment District. The district would have been drawn to include three property owners in the TIF District – OU Foundation, University Town Center, and NEDC. Although the three property owners were open to the Assessment District concept, there were a number of unresolved details.

While the City and affected property owners continued to work on the Assessment District concept, another option was proposed that would ensure the construction of the Rock Creek

Overpass. Mayor Rosenthal received a letter from John Q. Hammons regarding this proposal. Development Agreement No. 2 for the Hotel/Conference Center provides that the City would consider purchasing the Conference Center for $15 million upon its completion. Mr. Hammons' letter essentially asks that the City choose not to purchase the Conference Center and instead allocate those TIF dollars to finalize the funding for the Rock Creek Overpass project and to perhaps consider using the remaining $7.25 million originally allocated to the Conference Center to enhance the Lifestyle Center.

Although advised such as change would not be construed as a major Project Plan Amendment under the Local Development Act, Council opted to go through the Project Plan amendment process. This included referral to the Statutory TIF Committee for recommendation to modify the UNP TIF Project Plan. With adoption of Ordinance No. O-0809-8, which included the Rock Creek Road Overpass as a Traffic and Roadway Improvement and funds have been allocated appropriately for the purpose of funding $7,750,000 of the design and construction of the overpass, and setting aside $8.75 million for use in the future for Cultural facilities.

Development Agreement No. 4 provides that the funding for the Rock Creek Overpass will consist of the following: (1) a grant from ODOT to the City of Norman of $4 million; (2) a matching grant from the U.S. Federal Highway Administration, which will be requested by the City through ACOG and is estimated to be $1,070,000; (3) funding from the City of Norman Recoupment Fund to fund the connection from the Overpass to 36th Avenue NW, estimated to be $780,000; and (4) Revenue Bonds, as part of the first TIF financing before Council on May 27, 2008 in an amount of $7,750,000.

Development Agreement No. 4 also reaffirms the commitment of the Developer to the Lifestyle Center, as well as OU and NEDC's commitment to quality economic development in the north half of the TIF area. This agreement also formally releases the City from all obligations regarding the Conference Center. Development Agreement No. 4 also provided that the OU Foundation would provide funding commitments of up to $29.12 million for project costs as a "private placement" note on a 20 year term at initial lending rates of 3.75%, thereafter adjusted annually at 1.25% above 1 year Treasury note with certain caps in the first five year. This funding commitment covered Rock Creek Road Overpass of I-35, Legacy Park Construction, Traffic & Roadway costs, and Enhanced landscaping.

Difficulty in issuing the debt as authorized was attributed to the lender (the OU Foundation) no longer having a banking partner that was willing to close the debt financing on the original terms, and in part because of dramatic shifts in the economy since the Fall of 2008. Later in June of 2009, the debt issuance was restructured and approved by City Council that provided for debt authorization Resolutions R-0809- 160 and R-0809-161, consistent with and a step toward implementation of Development Agreement No. 4, but authorizes only one half (½) of the debt originally contemplated. The first funding authorization occurred at closing on June 30, 2009. The City will then be able to draw, on an as needed basis, those amounts necessary to complete Rock Creek Overpass, the Rock Creek Road & 24th Ave NW intersection, Legacy Park design, initial project activity costs, and cost of issuance. The second funding authorization would fund construction of Legacy Park, the intersection at 24th Ave NW and Legacy Park Drive and any other project plan roadway improvements that can be accomplished within the total authorization.

UNP Economic Development Agreement – approved September 21, 2010
The University North Park TIF Project Plan called for an Economic Development component that would foster special employment opportunities in Norman. The land area that includes the UNP TIF Project boundary was designated by the Oklahoma Department of Commerce in 1992 as an Enterprise Zone. By virtue of the Enterprise Zone designation, the UNP TIF Project qualified for a Tax Increment Financing District under the Local Development Act.

The Economic Development component of the UNP TIF outlined in the Project Plan provides for $8.25 million in funding to foster special employment opportunities. The Master Development Agreement further refined this focus by identifying sixty (60) acres of land that could be purchased by the Norman Economic Development Coalition at discounted prices in an effort to provide some incentive tools for courting future employers of new employees to Norman that meet the criteria of the Oklahoma Quality Jobs Act. Under the Master Development Agreement another forty (40) acres at market prices is also available for the same purpose.

A final plat was approved by City Council in April of 2008 for the development of the University North Park Corporate Center consisting of twenty-eight (28) acres of land that would provide for six lots for development of high quality office space to be utilized by future employers. A revised Final Plat for the University North Park Corporate Center was approved by City Council in June 2010 that increased the size of the development to thirty (30) acres.

The City Council approved Development Agreement No. 4 in September of 2008 and, acting as the Norman Tax Increment Finance Authority, approved a Tax Increment Revenue Note of up to $14,560,000 in June, 2009. When the Revenue Note was approved, a portion of the UNP TIF Revenue Stream was specifically identified and reserved to support UNP TIF Economic Development efforts. Ten percent (10%) of the UNP Retail Sales Tax apportionment, 50% of the ad valorem revenues from property acquired by NEDC, and any approved Economic Development Sales Tax Increment (an additional apportionment of sales tax tied to New Quality Jobs payrolls upon Council approval) were all excluded from the pledge supporting the Revenue Note in order to provide a revenue stream to implement future Economic Development portions of the Project Plan.

The following items, approved by City Council, were steps toward implementing the Economic Development portion of the UNP Project Plan, utilizing the UNP Economic Development Revenue Stream. The first item was the UNP TIF Economic Development Agreement that provided the structure by which future economic development activities by NEDC in the UNP

TIF would occur. The second item focused on the purchase by NEDC from UNP, LLC (a wholly owned subsidiary of the OU Foundation) of the thirty (30) acres that has been platted as the University North Park Corporate Center, utilizing a portion of the UNP TIF economic development revenue stream as a credit enhancement to allow the loan to be commercially acceptable. This credit enhancement pledge of an estimated $800,000 only involved accumulated revenues and revenues that are projected to accumulate during the fiscal year 2011.

The third and fourth items related to providing authorizations to issue indebtedness by the City and the Norman Tax Increment Finance Authority (NTIFA), to allow the borrowing of up to $16.5 million using the UNP TIF economic development revenue stream as the source of payment or collateralization. This authorization ensured flexibility to move quickly provided an appropriate project involving a qualified employer was presented to NEDC and ultimately the NTIFA. Although the debt limits and parameters were identified in the Resolution, no draws on this debt authorization would occur and no Economic Development Sales Tax increments would be provided until the NTIFA has reviewed and approved a specific project that it feels meets the goals of the Economic Development portion of the UNP Project Plan.

A Council subcommittee was updated several times regarding progress toward the purchase by NEDC of the thirty (30) acre tract. Council was updated at the Council Conference held August 10, 2010 of the structure of and the City's role in providing credit enhancement for the purchase. Following that direction, Council was again updated at a Study Session held September 7, 2010, of the proposed purchase.

UNP Economic Development Agreement. The purpose of the proposed University North Park Economic Development Agreement is to implement the economic development provisions of the Norman University North Park Project Plan, the Master Operating and Development Agreement, and Development Agreement No. 4 in order to provide and foster quality employment opportunities by attracting, expanding, and retaining enterprises deemed desirable to the future of Norman.

The University North Park Economic Development Agreement parties are the Norman Economic Development Coalition, an Oklahoma not-for-profit corporation (NEDC), the City of Norman, the Norman Tax Increment Finance Authority, University North Park, LLC, University Town Center, LLC, and University of Oklahoma Foundation, Inc.

The University North Park Economic Development Agreement provides a framework and effective implementation mechanism for individual economic development agreements with businesses locating in University North Park. NEDC will be responsible for carrying out the economic development activities authorized by the Project Plan. NEDC will enter into development agreements with business enterprises deemed appropriate and desirable to achieve the objectives of the Project Plan and to attract, nourish, and sustain quality employment opportunities in University North Park that benefit the City of Norman. NEDC will:

1. Enter into development agreements in accordance with the provisions of the Project Plan, the University North Park Economic Development Agreement, and the provisions of the Oklahoma Local Development Act;

2. Acquire and develop properties in accordance with the provisions of the University North Park Economic Development Agreement;

3. Enter into necessary and appropriate financing agreements to carry out its responsibilities utilizing pledged economic development tax increment revenues and state local government matching payments pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, if any; and

4. Provide quarterly and annual reports to the City of Norman and the other parties to the University North Park Economic Development Agreement regarding the performance of its obligations.

In support of the economic development activities, the City of Norman will:

1. Authorize the expenditure of economic development project costs by NEDC in an amount not to exceed $8,250,000, consistent with the Project Plan;

2. Implement the Economic Development Sales Tax Increment provisions of the Project Plan when New Quality Jobs are recruited to the UNP TIF Project;

3. Authorize the issuance of indebtedness by the Norman Tax Increment Finance Authority in an amount not to exceed $8,250,000 in tax apportionment debt, and up to $8,250,000 in other indebtedness, totaling $16,500,000 in combined debt (the non tax apportionment debt in the amount of $8,250,000 contemplates debt incurred for project costs to be repaid out of matching funds and other development revenues; it does not contemplate placing any additional liability upon the City, and is a limited revenue obligation); and

4. Approve and submit, where appropriate, applications for state local government matching funds pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act.

University North Park will transfer and convey property from time to time to NEDC in order to carry out the economic development provisions of the Project Plan and the University North Park Economic Development Agreement. The property transfer provisions contained in prior agreements are incorporated into the University North Park Economic Development Agreement.

University Town Center and the University of Oklahoma Foundation will cooperate and support the implementation activities of NEDC in carrying out the provisions and achieving the objectives of the University North Park Economic Development Agreement. The Norman Tax Increment Finance Authority, pursuant to authorization and direction by the City, will pledge and pay to NEDC the tax increments available to pay economic development project costs, which consist of an estimated ten percent (10%) of the Retail Sales Tax Increment (it being understood that an estimated fifty percent (50%) is allocated to other project costs and an estimated forty percent (40%) is allocated to the City), the ad valorem tax increment generated by the economic development tract (*i.e.*, the properties acquired by NEDC), and one hundred percent (100%) of the Economic Development Sales Tax Increment.

The UNP Economic Development Agreement provides a framework and empowerments that will allow NEDC to act quickly and responsibly when recruiting a potential employer that will bring new Quality Jobs to Norman consistent with the goals of this component of the UNP TIF Project. Under the Agreement, NEDC will need to negotiate agreements with potential users that will ultimately need to be approved by NTIFA for implementation. The proposed UNP Economic Development Agreement blends a valuable set of state authorizations with local, creative project implementation.

<u>Resolution No. R-1011-39 – Concurring in NEDC land purchase and providing UNP TIF ED Revenue as credit enhancement</u>. With approval of the UNP Economic Development Agreement, the first action in accordance with the Agreement is to use accumulated UNP TIF Economic Development Revenues to assist the Norman Economic Development Coalition (NEDC) with the purchase of the first UNP Economic Development tract from the UNP, LLC. As described above, the platted thirty (30) acre tract that is the University North Park Corporate Center will be the first parcel of economic development land purchased in the TIF in accordance with the Project Plan and the Master Development Agreement. The Land is being purchased for the discounted price of $1.25 per square foot or $1,633,500. Purchasing this land at a discounted price will give NEDC a valuable tool as it works toward providing incentives to attract potential new Quality Jobs employers to the UNP TIF District.

The Purchase and Sale Agreement was originally negotiated between NEDC and UNP, LLC in September of 2008. Although NEDC felt fairly confident with one lot sale in the project, the second lot sale to make the project economically feasible did not materialize after the nationwide economic downtown in 2008. There have been a series of extensions granted for the Purchase and Sale Agreement.

Even though the second lot sale did not materialize, Republic Bank of Norman offered to extend financing to NEDC to make the land purchase. The term sheet for the loan has been previously provided to Council, but essentially involves a three year loan, at a 6% rate. Payments will be interest only, with the full principal of the loan due at the end of the term. An advance on the infrastructure costs will require two lot sales. Republic Bank, although coordinating the transaction, would also like to offer participation to other local banking institutions in both the land purchase loan as well as the infrastructure loan when progress toward that work becomes timely.

Because NEDC does not have an independent revenue stream to pledge to securitize this land acquisition and land development loan, the City and the NTIFA have been asked to provide a pledge of the UNP TIF Economic Development Revenue Stream as a credit enhancement for the loan. The pledge will be for an estimated $800,000. This amount represents UNP TIF ED Revenues that have accumulated since the first financing in June of 2009 and UNP TIF ED Revenues that are anticipated to accumulate during the current fiscal year ending June 30, 2011. Because the pledge consists of accumulated revenues or those that will accumulate during the current fiscal year, this pledge would not be classified as a debt financing. Pledged revenues may be used to make semi-annual interest payments or credited toward loan principal repayment should NEDC not be able to achieve the anticipated two lot sales or develop the property over the next three years. As noted by the NEDC Executive Director at the Council Study Session on September 7th, it is the intent of NEDC to move the project forward quickly and have the project stand on its own, without a need to use UNP TIF ED Revenues for interest payments. Should interest or principal payments be necessary from pledged UNP TIF ED Revenues, and then NEDC intends to reimburse these costs, unless the City agrees otherwise at a later date.

Resolution No. R-0111-39 concurs in the NEDC land purchase from the UNP, LLC, and authorizes the pledge of accumulated UNP TIF ED Revenues and UNP TIF ED Revenues to be accumulated during this fiscal year, but not to exceed $800,000. An account control agreement for these funds, similar to the one executed with the Bank of Oklahoma in the 2009 Revenue Note will be prepared for either Republic Bank or a separate Trustee Bank. The City Manager, upon advice of the City Attorney, will be authorized to execute the account control agreement and other implementing documents, as needed.

<u>Resolutions R-0111-40 & R-0111-41 – City and NTIFA Authorization of Indebtedness for UNP Economic Development purposes consistent with specified parameters.</u> As discussed in the City Council Study Session on September 7, 2010, the Economic Development Agreement contemplates a debt authorization consistent with the Project Plan, Master Development Agreement, and Development Agreement No. 4. The maximum debt that can be authorized under the Project Plan using UNP TIF ED Revenues as a repayment source is $8.25 million.

The revenue streams identified in the documents to repay such a debt include: (a) an estimated 10% of the UNP TIF Retail Sales Tax Increment (understanding that an estimated 50% goes to fund other Project Costs and an estimated 40% goes to the City's General Fund); (b) the UNP TIF *ad valorem* Increment from land acquired by NEDC (understanding that 50% goes to the taxing entities, and 50% goes to economic development project costs); and (c) 100% of any approved Economic Development Sales Tax Increment (that portion of additional sales taxes generated by the creation of new Quality Jobs in the District, as approved by the City Council). Since NEDC has yet to acquire any land in the UNP TIF District that has been placed on property tax rolls, there has been no *ad valorem* revenue stream generated in this category. Since new Quality Jobs in the District are yet to be created, no Economic Development Sales Tax Increment has been generated. However, the estimated 10% of the UNP TIF Retail Sales Tax Increment was identifiable and was then accumulating at about $31,500 per month.

Identification of reliable revenue streams to support a commercially reasonable loan is critical to any UNP TIF-based debt financing. If the revenue stream does not support the loan, then the loan will not be made. This is mentioned to assure Council that, although Resolutions R-0111-40 and R-0111-41 seek authorization to allow debt financing, this authorization is only a step in the process that will allow NEDC to act quickly to recruit a new Quality Jobs employer *provided the revenue streams support a financing* that may be needed to provide an incentive to the employer. The potential incentive may take on a variety of forms depending on the needs and interests of the potential employer and will not be solidified until NTIFA approval of a separate economic development agreement with NEDC, the City, and the potential employer has been achieved.

The Resolutions also authorize non tax apportionment debt in the amount of $8,250,000. This provision contemplates debt incurred for project costs to be repaid out of matching funds and other development revenues. It is a limited revenue obligation and does not place any additional liability upon the City. This provision recognizes that there may be an identifiable revenue stream from land sales, lease revenues, or matching state funds upon which a financing may be based, provided a lending institution is comfortable with the identified revenue stream.

Matching funds, if any, provided by the State pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, 62 O.S. §840, *et seq.* (Leverage Act), and proceeds from the sale and/or lease of land by NEDC to prospective employers locating within the Economic Development Tract would be pledged to repay this $8,250,000. The matching funds, if any, will be pursuant to the Leverage Act. The Leverage Act allows the State to match local sales tax increments used to pay project costs in a project established by a city, town, or county in an enterprise zone pursuant to the Local Development Act. Application of the Leverage Act is narrowly tailored and would apply only to the non-retail economic development activities, such that the only sales tax increments that may qualify for matching would be the Economic Development Sales Tax Increment. State participation must be revenue neutral to the State, so the calculated benefits must be new to the State to be considered for matching payments.

This debt authorization moved NEDC and the City closer to being able to utilize employer recruitment tools contemplated by the UNP TIF Project Plan, while still requiring Council approval of an agreement with each individual user that seeks to bring Quality Jobs to Norman. The acquisition of the land in the NEDC Corporate Center and the first step in utilizing the UNP Project Plan Economic Development component demonstrated the City's commitment to that portion of the Project Plan. This commitment was expected to assist NEDC in its New Quality Job employer recruitment efforts.

Development Agreement No. 5 - approved May 8, 2012

The parties had been working on Development Agreement No. 5 since the summer of 2009, right after the first financing in the UNP TIF was authorized. On June 23, 2009, City Council and the Norman Tax Increment Finance Authority (the "Authority") approved Resolutions R-0809-160 and R-0809-161 which authorized financing to fund Rock Creek Overpass, Legacy Park, and related intersections in the UNP TIF. The terms of the 2009 financing provided two funding authorizations. The first funding authorization provided up to $8.4 million to complete the Rock Creek Road Overpass project, including the 24th Ave NW and Rock Creek Road intersection, design costs for Legacy Park and the intersection at 24th Ave NW and Legacy Park Drive, to pay for Initial Project Activity costs, and to pay financing costs. Approximately $6,564,122 was drawn by the Authority from the first funding authorization to complete the Rock Creek Overpass Project and other authorized items.

The second funding authorization provided up to $6.16 million, to construct Legacy Park, including the intersection of Legacy Park Drive and 24th Ave NW, and other project roadway improvements to the extent authorized funding would allow. The second funding authorization was contingent on an agreement between the City, the Authority, University Town Center, LLC ("Developer") and UNP, LLC (a wholly owned subsidiary of the OU Foundation) on Development Agreement No. 5. Development Agreement No. 5 was envisioned at that time to focus primarily on road improvement sequencing considering the I-35 frontage road study, other TIF related issues such as the future of the Lifestyle Center, and funding the remaining roadway improvements.

The key components of Development Agreement No. 5 have been discussed with Councilmembers individually and then collectively on April 10, 2012 at the Council Conference. Contract No. K-1112-125, Development Agreement No. 5, is the culmination of these efforts. The key components of Development Agreement No. 5 are outlined below.

Traffic and Roadway Improvements: Development Agreement No. 5 identifies three projects as first priority traffic and roadway improvements: the Robinson and I-35 Interchange (NE quadrant) improvements; extension of the frontage road through UNP; and design of the Robinson and I-35 improvements for Interstate Drive and Crossroads Blvd. The Robinson and I-35 interchange improvements on the northeast quadrant was projected to be completed in

August 2012. Development Agreement No. 5 provides that the TIF's portion of these improvements costs will be paid from the release of collateralized Accumulated TIF Revenues, so no additional debt will be incurred.

The identified second priority traffic and roadway improvements include: improvements at the Tecumseh intersections in the TIF project area; remaining intersections yet to be built along 24th Avenue throughout the TIF district; and construction of needed improvements at Robinson and W. Interstate Drive and Crossroads Blvd.

Legacy Park – Project Plan & Development Agreement No. 3: The Project Plan for the UNP TIF District specified that TIF funding for the construction of Legacy Park was to be available *after* 250,000 square feet of retail space in the Lifestyle Center was constructed. Development Agreement No. 3 (2007) escalated the Park construction schedule ahead of the Lifestyle Center construction schedule. In addition to escalating the construction of the Park ahead of the Lifestyle Center construction schedule, Development Agreement No. 3 established penalties designed to reimburse the City for Park construction costs and to reimburse the City for frontage road construction costs, should the Developer fail to construct 250,000 square feet of Lifestyle Center retail space by January 1, 2016.

Development Agreement No. 3 provided that the Developer donate the Park property to the City, the City then construct the Park, and the Developer would then maintain the Park (excluding capital maintenance items). Development Agreement No. 3 also provided $900,000 in TIF revenues to serve as Development Assistance for the purpose of helping to establish a viable maintenance fund for the Park.

Design and Construction: The Park was designed by Scott Howard of Howard-Fairbairn Site Design, Inc. in the Fall of 2009. Council has previously reviewed the Park design. The TIF Oversight Committee has also previously reviewed and approved the Park design. The City moved forward to bid the park construction project in November 2009. The original budget for the park was $5.1 million and the Engineer's Estimate after the park was designed was $5,794,877 and included 13 alternates. The low bid received in December 2009 reflected a base bid of $5,678,000 with a total bid of $6.1 million when including all 13 alternates.

Because of the economic recession and concern regarding incurring the penalties tied to Lifestyle Center if 250,000 sq. ft. of the Lifestyle Center was not complete by 2016, the Developer did not donate the land for the Park pursuant to Development Agreement No. 3. The Lender was then not willing to advance park construction funding when the City did not own the land upon which the park was to be constructed. For these reasons, the City was not able to move forward with Legacy Park construction as bid in 2009.

Much of the discussion from late 2010 to mid 2012 focused on how to mitigate the risk of incurring penalties should Legacy Park construction move forward but the Lifestyle Center goal not be met by 2016. Having worked through the penalty issues, as outlined below, Development Agreement No. 5 provided that the land will be donated via plat, as required by City subdivision regulations, but also provides that a deed for the land be placed with an escrow agent within 30 days of the approval of Development Agreement No. 5, to be released upon Final Plat approval by Council. Following transfer of the property with approval of the Final Plat for Legacy Park, rebidding for construction of Legacy Park was anticipated to occur later in the summer of 2012.

Dedicated parking for restaurants locating around the water feature. Another issue that arose from the escalation of the Park ahead of the Lifestyle Center was a potential conflict regarding parking for restaurant and Legacy Park patrons. Originally, Lifestyle Center parking was envisioned to be shared with park patrons. With the park being constructed before the Lifestyle Center, shared parking was no longer viable. Concerns about parking were expressed through the Developer by potential restaurants that were considering locating around the Legacy Park water feature. In 2009, Council was presented with an option to construct a parking lot on the park land adjacent to the frontage road. This proposal was not well received primarily because of the encroachment onto the park land. To allow potential restaurants that may be located around the water feature to be assured dedicated parking for their patrons, Development Agreement No. 5 provides that parking dedicated to Legacy Park may be constructed to the west of the Academy store location. Currently, an oversized detention pond exists and the proposal, which has been reviewed by the City Public Works Department, is to utilize a small portion of the drainage area to construct a parking lot for Legacy Park patrons. The Lender agreed in Development Agreement No. 5 to release collateralized Accumulated TIF Revenues up to $175,000 to fund this additional parking, so no additional debt will be incurred should this lot be constructed.

Note: in 2018, the Citizen TIF Oversight Committee revisited the parking issue for Legacy Park and has now suggested the Council reconsider a park patron parking lot along interstate drive and just on the west side of Legacy Park.

Legacy Park Maintenance. The Developer expressed concern about the Legacy Park maintenance obligation in Development Agreement No. 3. Several approaches to this issue were discussed during the negotiation process. Ultimately, the Developer and University North Park, LLC (a wholly owned subsidiary of the OU Foundation and owner of most of the northern portion of the TIF increment district) have agreed to request that the City create a Business Improvement District (BID) to provide maintenance for both Legacy Park and Legacy Trail. To assist the BID in its development, the $900,000 of TIF funds originally contemplated as an endowment in Development Agreement No. 3, would be redirected and incrementally disbursed over the 9 years. The BID concept would provide $200,000 annually for maintenance of Legacy Park and Legacy Trail throughout the TIF district.

After Legacy Park construction is complete and in the first year of the BID, only Accumulated TIF Revenues of $200,000 will be available for maintenance costs. In the second year of the BID, $175,000 of Accumulated TIF Revenues plus a $25,000 assessment spread among all owners of developed property within the BID would be available for maintenance. In the third year, $150,000 of Accumulated TIF Revenues plus a $50,000 assessment spread among all owners of developed property within the BID would be available for maintenance. In the fourth year, $125,000 of Accumulated TIF Revenues plus a $75,000 assessment spread among all owners of developed property within the BID would be available for maintenance. This pattern will continue until the full $200,000 assessment is spread among all property owners of developed property within the BID. This approach leverages the $900,000 originally available for development assistance in Development Agreement No. 3 with a matching assessment to owners of developed property for a total of $1,800,000 for maintenance and BID development. When the BID was actually created, an additional year of a $200,000 commitment from the property owners was included leveraging the $900,000 TIF allocation with $1.2 million of BID assessments for a total of $2 million.

Thereafter, the maintenance assessment to developed property owners within the BID will be based on actual anticipated maintenance costs for Legacy Park and Legacy Trail. The BID Concept for the UNP TIF was presented to the NEDC Board of Directors on April 25, 2012. NEDC unanimously endorsed the approach, provided the valuation upon which the BID is based was limited to improvements on the property, excluding equipment and inventory, so that a manufacturing or industrial property owner did not end up shouldering a disproportionate share of the BID assessment.

2009 TIF Note Restructure: As noted above, the 2009 TIF Notes authorized $14.56 million of debt authorization to be drawn as needed. The original note provided a cap of $6.16 million for the second funding authorization that was to be used for Legacy Park construction and related intersection improvements. However, not all of the first funding authorization was drawn - $1.83 million remained. Development Agreement No. 5 allows for the note to be restructured such that the savings from the first funding authorization can be used for projects included in the second funding authorization. This means $7.99 million of debt authorization is available to complete construction of Legacy Park and the Legacy Park and 24th Ave intersection.

Additionally, the Lender agreed in Development Agreement No. 5 to reduce the reserve amount for the 2009 note by $450,000 (from $1.5 million to $1.05 million). The Lender also released collateral for the 2009 Note to allow the City to pay for the Robinson and I-35 improvements in the NE quadrant ($1,756,280); a master lighting plan, a master landscaping plan, design of a decorative entrance to the UNP TIF District ($200,000), and the loan restructuring fee ($250,000) from Accumulated TIF revenues on hand. Future release of collateral from accumulated TIF Revenues pledged under the 2009 Note include parking for Legacy Park ($175,000), BID development funds ($900,000 over nine years), design funds for

Robinson street improvements west of I-35 ($200,000), and frontage road extension construction costs ($1,525,000).

Cultural Facility land donation. One of the components of the UNP TIF Project Plan was construction of a Cultural Facility. The Developer offered to donate approximately 2 acres of land to be used for a cultural facility. This land is identified on Exhibit E to Development Agreement No. 5 in close proximity to the Embassy Suites Hotel and Conference Center. In addition to the two acre commitment, the Developer has agreed to sell additional land at $5 per square foot once the cultural facility is identified and the amount of land needed is ascertained. If the original site is not sufficient to accommodate the cultural facility identified in the future, the Developer has also agreed to trade the original donation with 2 acres (plus any additional purchased for the facility) elsewhere in the southern half of the district, provided the desired land is still available.

Lifestyle Center. The Developer expressed a desire to make some modifications to the Lifestyle Center originally contemplated in promotional materials to enhance the marketing of the Center. These modifications were presented to Council in October of 2011 by the Developer. A new marketing plan, removing the theater in the Lifestyle Center, is included as an Exhibit to Development Agreement No. 5. (Exhibit E). As noted above, the Developer has expressed concern about the penalties set forth in previous Development Agreements for failure to construct 250,000 square feet of retail space in the Lifestyle Center by January 1, 2016. Those agreements provide that the penalty for failing to meet that deadline was $8.3 million ($5.9 million intended as reimbursement for Park costs and $2.4 million intended as reimbursement for frontage road costs). Development Agreement No. 5 addresses these concerns in four ways.

- Square footage credit against penalties: Plans were underway for a Crest Fresh Market grocery store to be constructed in the TIF district on the east side of 24th Avenue in the area designated 6A on Exhibit E to the Development Agreement. While the approximately 109,000 square feet Crest store is anticipated to qualify under the Project Plan for Lifestyle Center incentives, no incentives are being requested. Instead, for purposes of the penalty provision associated with failure to construct 250,000 square feet of the Lifestyle Center only, the Developer is requesting credit for the Crest square footage. The Developer remains committed to constructing at least 250,000 square feet of retail space in the Lifestyle Center area (defined in Development Agreement 5 as Area 5 of Exhibit E). As illustrated in Exhibit E, Area 5 anticipates well over 300,000 square feet of retail space planned for the Lifestyle Center area, not including the Crest Market.

- Extension of deadline for penalty: In recognition of the two year economic recession that began in September 2008, Development Agreement No. 5 extends the deadline for Lifestyle Center construction from January 1, 2016 to January 1, 2018.

- Cultural Facility Land Donation: In exchange for the two acre donation, Development Agreement No. 5 provides that credit for that donation at $5 per square foot (estimated to be $435,600) will be applied against the $5.9 million penalty for failure to construct the required square footage of retail space in the Lifestyle Center by the new deadline of January 1, 2018.

- Penalty to reimburse for Frontage Road: Development Agreement No. 5 limits the $2.4 million penalty that was designed to reimburse for frontage road construction costs to actual construction costs or $2.4 million, whichever is less.

Development Agreement No. 5 moves forward several Project Plan objectives that have been identified by Council as being important for the City of Norman. Most notably, Development Agreement No. 5:

- moves Legacy Park forward for construction through land donation and 2009 note restructuring for construction funding;
- provides land for a cultural facility;
- provides construction funding for the Robinson and I-35 (NE quadrant) improvements through release of collateral;
- provides funding for the design of traffic and roadway improvements on the west side of Interstate 35 and Robinson Street through release of collateral;
- provides for dedicated parking for Legacy Park that will not conflict with restaurant parking for those restaurants located around the water feature;
- recommits the Developer to a minimum of 250,000 square feet of retail space in furtherance of the Lifestyle Center component of the Project Plan;
- leverages $900,000 of collateralized Accumulated TIF Revenues to be used as Development Assistance in the creation of a Business Improvement District (BID) to stimulate additional business development within the increment district that will ultimately provide for long term maintenance of Legacy Park and Legacy Trail located within the BID.

Council approved Contract No. K-1112-125, Development Agreement No. 5 on May 8, 2012.

NEDC Economic Development Activity – EDA Grant – Consortium Bank funding for infrastructure.

In September of 2012, NEDC was awarded a grant from the Federal Economic Development Administration (EDA) in the amount of $2.5 million to install public infrastructure within the UNP Economic Development land. The final plat for University North Park Corporate Center Section 1 was resubmitted and reapproved by Council on October 23, 2012 along with the final plat for University North Park Corporate Center Section 2. The Section 2 final plat includes the second 30 acres available for purchase by NEDC at an agreed-to price deemed to below market under prior UNP TIF Development Agreements. The second UNP Corporate Center tract is envisioned to be used for potential future employers that will operate "advanced manufacturing" types of businesses.

In October 2012, Council approved Resolution R-1213-64 concurring in NEDC's purchase of an additional thirty (30) acres contained in the plat for University North Park Corporate Center Section 2. A similar pledge of a portion of accumulated TIF ED increments was also made as back up security for this purchase and to be used to cover interest or financing costs pending lot sales by NEDC. After negotiations between NEDC and the developer of University North Park, NEDC closed on the second land purchase on December 5, 2013, which actually included 31.67 acres, all at the agreed-to price deemed to be below market value, $1.25/ sq. ft. The Lender also agreed to combine the loan for the first thirty acres with the loan for the second thirty (31.67) acres, while reducing the interest rate by one percentage point from the original loan rate with NEDC.

Having finalized the purchase of the full 61.67 acres of UNP TIF Economic Development Property, the Norman Economic Development Coalition (NEDC) moved forward towards finalizing the public infrastructure improvement loan (streets, water lines, sewer lines, storm water drainage facilities, etc.) to support development of the UNP Corporate Center. Costs for this infrastructure were supplemented with the proceeds of the previously referenced EDA grant. At the Lender's request, City/NTIFA approved Resolution R-1314-78 expanding the purpose of the original pledge of security for the NEDC loans on December 10, 2013, to allow those already pledged TIF ED increments to be used not only as security and carrying costs for the land acquisition, but also as security and carrying costs for the infrastructure loan.

The NEDC debt for the acquisition and infrastructure for UNP Corporate Center Sections 1 and 2 was structured with three loans. In total, eleven banks in the community came together to provided private financing to NEDC for this UNP Economic Development project. Loan 1, in the amount of $4,108,021, was for the acquisition of the property and "soft costs" related to design and engineering of the needed infrastructure to support the development (the "Acquisition Loan"). Three banks participated in the Acquisition Loan. The maturity date of the Acquisition Loan is April 5, 2024.

Loan 2, in the amount of $3,586,580, was for the cost of constructing the infrastructure to support the development (the "Infrastructure Loan"). Ten banks participated in the Infrastructure Loan. The maturity date of the Infrastructure Loan is June 17, 2017. The balance of this loan is approximately $2.55 million. At the Study Session on March 21, 2017, Council/NTIFA was advised of a request from NEDC to present a TIF Note pursuant to the Economic Development Agreement in the amount of $3 million to pay off the infrastructure loan and provide some additional funds for "carrying costs" and maintenance of the UNP Corporate Center property, while NEDC continues to recruit Quality Job employers as contemplated under the Project Plan. As noted, previously accumulated TIF ED increments pledged as security for the NEDC loans have been used to make periodic interest payments on the NEDC Acquisition and Infrastructure Loans since their initiation, pending lot sales by NEDC. The TIF ED increments previously pledged under Resolutions R-1011-39, R-1213-64, and R-1314-78 have been fully utilized for interest payments associated with carrying cost for the NEDC loans. Council appropriated accumulated TIF revenues in 2017 to assist in paying the balance of this loan off at its maturity date.

As mentioned the Economic Development Agreement, provides an option for NEDC to utilize either accumulated TIF ED increments, or Notes secured by the TIF ED increments. NEDC has been previously authorized to utilize the 2011 NTIFA Notes, such as the NEDC's Note draw request. However, in consultation with the Finance Department, it was recommended that these UNP Economic Development Project Costs be funded from accumulated TIF ED increments rather than issuing an additional Note. Bank of Oklahoma Trust Company holds the UNP TIF incremental revenues, as Trustee for the NTIFA; the portion of the TIF ED incremental revenues held by Bank of Oklahoma totaled $3,595,756.29, as of March 31, 2017. Using accumulated TIF ED increments, rather than issuing an additional Note will save interest costs and issuance costs.

Loan 3, associated with the NEDC UNP infrastructure UNP TIF economic development land in the amount of $2,500,000, provided "up-front funding" for the EDA grant. The EDA Grant was a reimbursement grant that required the infrastructure project costs to be incurred prior to the disbursement of grant funds. Five banks participated in Loan 3, a Grant Anticipation Loan. After the NEDC completed the infrastructure project, the grant was disbursed to the NEDC and the loan was repaid on March 11, 2015.

Development Agreement No. 6 – NEDC Quality Jobs – IMMY approved January 28, 2014.
With the land purchase finalized and the infrastructure loan close to finalization, NEDC moved forward with its first lot sale. NEDC negotiated the potential first lot sale utilizing UNP TIF funds to provide an incentive to help structure the transaction. Because the proposed transaction includes an incentive backed by UNP TIF Economic Development funds, a Development Agreement, approved by the NTIFA, was required.

Staff discussed the structure of Development Agreement No. 6 with Council at its Conference on December 10, 2013. On December 10, 2013, the UNP TIF Oversight Committee also reviewed the structure of the proposal that is now contained in the Development Agreement and found it to be "in keeping with the original goals and intent of the development plan." Pursuant to this Agreement, a local company, Immuno Mycologics ("IMMY") will purchase one lot located in the Advanced Manufacturing Center site from NEDC for a total purchase price of $1,920,000. Because this first lot sale will kick off the entire project and help solidify the funding for the loan for the entire project's infrastructure, NEDC is providing a discount to IMMY of $770,000 resulting in a net purchase price of $1,150,000. This nest price was felt by

IMMY to be in a more accurate reflection of market value.

IMMY was obligated by this Agreement to begin construction within 18 months, and complete construction within 36 months, of an approximately 60,000 square feet building. The building and the equipment are projected to require IMMY to invest approximately $12,500,000 in additional capital with this project. Additionally, based on its business plans for possible future expansion, IMMY has asked for a right of first refusal for 1 additional lot in the Advanced Manufacturing Center and 2 additional lots in the Corporate Center. In considering whether to offer the discount to the purchase price, NEDC reviewed IMMY's business expectations and was comfortable projecting that at least 50 new jobs will be added over the next ten (10) years at a salary of at least $50,000 per year plus benefits. These projections are consistent with NEDC's incentive policy for employers desiring to locate in UNP ED TIF property. IMMY concurs with those projections.

IMMY had been looking for sites on which it can expand its current operations. IMMY operates in the "life sciences" field - a field identified as a "target sector" in the Association of Central Oklahoma Government's 2012 Comprehensive Economic Development Strategy for Central Oklahoma. IMMY is owned and operated by two brothers who grew up on Norman, Sean and Scott Bauman. The Company was founded in Goldsby by their father, Stan Bauman, in 1979 with a particular focus in mycology, or the study of fungi. Both Sean and Scott are graduates from Norman High School and the University of Oklahoma. Sean holds a Phd in Microbiology and Immunology. Scott holds a degree in Business Administration. The Company, under the leadership of the two brothers, relocated the IMMY Operation to Norman in the early 2000's in the Norman Economic Development Coalition (NEDC) Business Park south of Highway 9, east of 24th Ave S.E. IMMY's scope has broadened to include the development of a variety of diagnostics designed for use in developing areas of the world. The tests that IMMY designs are marketed and used throughout the United States and worldwide. IMMY has been recognized by the Center for Disease Control (CDC) and the World Health Organization for its tests that are widely used in areas like sub-Saharan Africa where the necessary infrastructure for adequate healthcare is lacking. IMMY employs primarily professionals and research scientists, but also manufactures its test kits and so employs kit manufacturing personnel as well.

As IMMY prepares to position its company for the future, they have been looking for land sites to build new facilities and expand their operations to be able to meet the coming need for their products. IMMY had looked at different sites in the metro area, including sites in Moore. However, with the Bauman's deep roots in Norman, their preference was to find a site that met the financial constraints of an emerging company, and one that would further the economic growth of the City of Norman. The Baumans have been active in the Norman Community for a number of years. Discussions and negotiations about this site for IMMY occurred among the private entities over a couple of years.

One aspect of this Development Agreement that has allowed the Project to move forward has been exploring the use of UNP TIF ED funds to assist in NEDC's ability to provide the land discount to meet the need of IMMY to purchase a land site that fits within the business plan of this growing and emerging company. As set out in the Project Plan, the purpose of the Economic Development Component of the TIF was to create special employment opportunities. As Staff worked through various economic development policies and research with Council's Business and Community Affairs Committee from 2012 to 2014, it was clear that Council was comfortable with the concept of providing incentives with clawbacks as an approach to economic development.

With this Development Agreement, IMMY is not guaranteeing that additional jobs will be created. It is certainly within its business plan to create additional jobs and actually too far exceed the 50 jobs in ten years. However, as an emerging and growing company, IMMY was not comfortable tying a "clawback" provision to job creation. Even though the NEDC Board has been comfortable with not tying job creation to the clawback provision, to address these needs, the Development Agreement provides that NTIFA will only pay job creation incentive on jobs that are actually created. This approach is a reversal of more typical job creation incentive clawback structures that require up front payments that are "earned" later with job creation that results in "forgiveness" of a repayment requirement. Although the incentive payments are still tied to actual job creation, no incentive payment will actually be made unless the qualifying job is created. Because NEDC is providing the retail price discount up front, earned incentive payments will actually go to NEDC rather than to IMMY. In this arrangement, NEDC takes the risk of whether job creation will actually occur to an extent that will provide NEDC with reimbursement of the discount applied to the retail purchase price.

Budget considerations to the NTIFA regarding this incentive pledge are not significant. Since the incentives for new jobs meeting the criteria in the NEDC's Incentive Policy will be paid on an annual basis after their creation, there are sufficient accumulated UNP TIF ED funds available or that would be available over the years to pay for the earned incentives. As stated earlier if IMMY does not create new jobs as anticipated, the incentive will not be earned and no NTIFA funds will be expended. The Development Agreement also sets the maximum amount of the incentive at $770,000. As further protection, NTIFA and NEDC have a right to repurchase the property sold to IMMY under certain circumstances. This right of repurchase cannot be exercised by NEDC or NTIFA as long as IMMY begins construction of its building within 18 months of closing on the land sale, IMMY fully occupies its building within 36 months of the closing on the land sale, and IMMY maintains as its principal place of business the Advanced Manufacturing Center or other site in the UNP TIF for at least ten years. Furthermore, IMMY is forbidden from selling the property for speculation or for the development of general offices for lease to the open market.

NEDC appeared to be satisfied that IMMY was the right type of company to locate on the UNP TIF ED property. All that was required of the NTIFA is to pledge payment for Quality Jobs that are created by the Company locating in the UNP TIF District <u>only after</u> the jobs are created and sustained on an annual basis. There is no risk of paying for jobs that are not actually created or sustained. IMMY has opened and has continued to exceed the quality job creation projections upon which Development Agreement No. 6 was premised.

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 2017 was $21,500. 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 2017 totaled $55,315. The total Quality Job incentives actually earned by IMMY through 2017 for creation of 41 Quality Jobs are $70,435, which is 27% above projections.

Amendment No. 1 to Development Agreement No. 5 – approved April 28, 2016
Staff presented proposed amendments to Development Agreement No. 5 at a City Council Conference in December 2015 and to the City Council Finance Committee in January 2016. The amendments were also presented to the University North Park TIF Oversight Committee at its January meeting. The proposed amendments addressed four primary areas:

- Incentive criteria updating and clarification
- Coordinated Master Planning
- Construction of Entrances into the District and Lifestyle Center
- Timeline extensions for Cultural Facility and Lifestyle Center development

Staff continued to negotiate with the Developer for additional amendments to address the concerns heard from City Council and the TIF Oversight Committee. After the January 2016 TIF Oversight Committee meeting, Staff learned of the progress of a new potential regional draw Entertainment Venue in UNP and incorporated consideration of this concept in the amendments. The current proposal was discussed with the TIF Oversight Committee in March and resulted in a recommendation that the City move forward with these amendments to Development Agreement No. 5. Below is a summary to the amendments.

Incentive Criteria

The Project Plan authorizes up to $8.25 million to be made available for retail incentives. To date, none of these incentives have been granted to the developer. Currently, a retailer could request an incentive if two of the following three criteria are met: (1) the retail store doesn’t exist within a 21 mile radius, (2) retail sales thresholds were met ($175 per square foot for stores > 10,000 square feet and $275 per square foot for stores < 10,000 square feet), and (3) the retail store relocated from outside of Norman.

This Amendment tightens those criteria some and also brings in an element of the City's vision for the design of the Lifestyle Center. Under this proposal, a retailer would not be eligible for an incentive unless (1) the retail store does not exist in Norman, (2) higher retail sales thresholds are met ($300 per square foot for stores > 10,000 square feet and $400 per square foot for stores < 10,000 square feet), and (3) the design incorporates urban design elements of walkability and connectivity. All three (instead of 2 of 3) must be met in order for an incentive to be considered by City Council. Council will still have authority to grant an incentive here, but the added language helps define when such an incentive might be considered.

Coordinated Master Planning

Prior to this amendment there was no requirement for coordinated master planning beyond the original 2005/2006 plan. The Developer of the north half of the UNP area, the OU Foundation, wanted to master plan its land, as market demands have likely changed significantly since the TIF was adopted in 2006. The proposed master plan for the north half presented an opportunity to coordinate the future development of the north half with the existing and planned development for the south half, with a focus on the Lifestyle Center. The master planning will be done by RTKL Associates, a global architecture, planning and design firm. The planning effort will be led by Jeff Gunning, an architect whose expertise includes mixed-use and shopping and entertainment districts.

In January 2016, it was proposed that the City (NTIFA) split the cost of the master planning effort with UNP, with each party paying $20,000. Under the current proposal, the City would be sharing the costs of its portion with the Developer for the south half ($10,000 each). Although the Developer expressed a willingness to fund the full $20,000 for the south half, funding a portion of the master plan ensures the City will have input into the planning process.

Construction of Entrances

Council has long expressed a desire for an entrance into UNP at Robinson and 24th Avenue. A proposed design was circulated several years ago but a funding arrangement had not been finalized. Development Agreement No. 5 allows UNP Business Improvement District (BID) funds to be used for this purpose. The proposal in January was that two entrances be constructed – one at Robinson Street/24th Avenue and one at Legacy Drive and 24th Avenue marking the entrance into the Lifestyle Center. The Lifestyle Center Entrance costs were estimated to be $600,000. The entrances were to be funded equally by UTC (Developer for the South Half), UNP BID, and the enhanced landscaping allocation from the NTIFA. The entrance at Robinson would be constructed as previously designed and the Lifestyle Center entrance would be constructed later with input from the retail anchor(s).

The amended proposal is that the entrance design be modified to ensure it ties into Legacy Park features. The new design would be installed at Robinson and 24th and Tecumseh and 24th to bookend the district. The Tecumseh entrance would be funded equally by UNP and the BID. The Robinson entrance would be funded equally by UTC and the BID. The Lifestyle Center entrance is no longer included in this amended proposal. The UNP Business Improvement District Advisory Board supported this approach.

Timeline Extensions – Cultural Facility Land
Development Agreement No. 5 identified approximately 2 acres of land south and east of Embassy Suites and obligated the Developer to donate it to the City. An option was also granted to the City to purchase additional land adjacent to the site at $5.00 a square foot. That option expired on June 30, 2015. The Cultural Facility site must be developed within 10 years.

The current proposal allows the City to move the donated Cultural Facility land to a site north of and adjacent to Embassy Suites. The option to buy additional land at $5/square foot would be extended to June 30, 2026. The timeline for development of the Cultural Facility additional land is June 30, 2026.

Timeline Extensions – Lifestyle Center
The Project Plan originally contemplated development of the Lifestyle Center before development of Legacy Park. In 2007, the Parties approved Development Agreement No. 3 which reversed the order of Legacy Park and the Lifestyle Center. Development Agreement No. 3 also provided for certain penalties to reimburse the City for Frontage Road costs and Legacy Park costs should at least 250,000 square foot of retail space to shell completion of the Lifestyle Center was not constructed by January 1, 2016. Then, the economy nationwide suffered a major recession in 2008. In 2012, Council approved Development Agreement No. 5 that credited UTC with the square footage of the Crest store toward the penalty provision and extended the deadline for UTC to construct the remaining approximately 146,000 square feet of retail space to shell completion from January 1, 2016 to January 1, 2018. If the Developer fails to meet the deadline to construct retail space to shell completion, it must repay the City for the frontage road ($2.4 million) and Legacy Park ($5.9 million).

The deadline for the Lifestyle Center has been problematic since the recession of 2007-2009. Discount retail has rebounded more quickly from the recession than more upscale retail. Large retail anchors are more cautious with expansion plans, and new stores are smaller than pre-Great Recession. The master planning effort described above, along with some new requirements for Lifestyle Center tenants will help to shape the development of the Center into something that is designed to be successful and sustainable. Additionally, the City was aware of a proposal for a regional draw entertainment venue that, if built, could help define the area as a destination and diversify the tenants for the Lifestyle Center.

The amendment extends the deadline for approximately 146,000 square feet of retail space in the Lifestyle Center area to June 30, 2023 to allow the planning efforts to move forward and the regional draw entertainment venue possibility to be further explored. It clarifies that the stores that locate in the Lifestyle Center must be from outside of Norman. If design concepts that are important to the City, like urban design, walkability, and/or mixed use concepts, are used, an additional 3 year extension may be given to allow the project to come to fruition as envisioned.

Regional Draw Entertainment Venue
Also, with the proposal for an entertainment venue, the Developer has expressed a willingness to reserve 16.87 acres north of Embassy Suites and the new cultural facility site for this venue. This additional land reservation was coordinated with the CS&L Study commissioned by the Cleveland County Industrial Authority to explore an arena project. The Developer has agreed to hold off on developing that land for 30 months and agreed to sell it for $5.50 a square foot. The 30 month deadline can be extended if the project is moving forward towards realization through June 30, 2026. The entertainment venue could solidify this area as a destination and help spur other components of the UNP Project Plan.

Callison / RTKL Master Plan – 2017
The Master Plan work authorized by City Council in the Amendment to Development Agreement no. 5 was completed in the summer of 2017. Due to Traffic concerns that could stem from an Entertainment District Concept at that location, as opposed to just north of Embassy Suites, discussion was initiated with SW Wire regarding a possible frontage road extension to Tecumseh. A preview of the RTKL Master Plan and a briefing on SW Wire discussion was held with City Council members in small group meetings in July of 2017. Roadway alignments and potential land swaps were discussed. In September a roadway alignment concept was agreed upon, but other issues regarding land swap or possible relocation issues delayed further progress on the roadway extension. Council was briefed on these issues on September 15, 2017.

Components of the RTKL Master Plan were discussed with Council members, particularly the Regional Draw entertainment district recommendation anchored by an arena; immediate relief to the General Fund; accommodating request from the NPS; projected tax generation estimates from the proposed development; and the impact that such a proposal might have on the Center City Form Based Code implementation strategy through use of Tax Increment Financing. The RTKL Master Plan was presented to the Citizen UNP TIF Oversight Committee on September 19, 2017, who advised that the Master Plan proposal for the area north of Rock Creek Road, presented by RTKL and submitted by UNP LLC, was consistent with the Project Plan Goals and Objectives of providing a Regional Draw of visitors and shoppers to Norman. If the RTKL Master Plan were adopted, amendments to the zoning attached to the property would be required to allow entertainment oriented retail land used north of Rock Creek Road. The property owners initiated a rezoning request to go before the Planning Commission in September of 2017 in order to obtain a Planning Commission Review and Recommendation. After a series of postponements, the property owner moved forward with Planning Commission review on June 6, 2018 which received a positive recommendation.

City Council also reviewed the RTKL Master Plan at its Study Session on September 19, 2017. Possible UNP Project Plan Amendments were presented to City Council on October 10, 2017. During this time, the Council had authorized the appointment of a Statutory Review Committee to consider the Center City TIF District. The UNP TIF Proposal was placed on hold while more focus was place on the Center City TIF proposal. Planning Commission approved the Center City TIF proposal offered by the Statutory Review Committee. Council unanimously approved the Center City TIF proposal on December 19, 2017, and at the same meeting approved the north base land swap and lease agreement that provided a location for three Norman Forward projects on north base: Indoor Aquatics, Indoor Multi-sport facility, and Senior Center. The addition of 2.5 acres for the Senior Center location on north base at no additional cost was negotiated at the suggestion of City Council.

Additional Council interaction on the UNP TIF Proposal occurred after the first of the year in 2018. Information was presented at a Ward 2 meeting at the request of Council member Karjala. Information was presented to the Citizen UNP TIF Oversight Committee at the request of the Committee chair in January. Council members met with OU Foundation representatives regarding the UNP Entertainment District Proposal in January and February.
A group of Council members submitted a Resolution at the end of February seeking to modify the UNP Project Plan to provide funding for a senior center, which was unanimously approved by City Council. The idea was sent to the Statutory TIF Committee to consider. The Citizen's TIF Oversight Committee also made a recommendation regarding the idea. Council formally received the recommendations from these bodies.

Additional study regarding the north ½ Entertainment District/Arena proposal was performed by City Council in May and June. Efforts to "skinny down" the requested increase in TIF increment authorization was communicated to City Legal Staff from a number of Council members, the City Manager, a prominent citizen of the development community who had worked directly with Councilmembers Castleberry and Hickman, and Cleveland County representatives. These efforts were attempts of find funding for the Senior Center, funding for the County Expo Center at the Fairgrounds, while perhaps also reducing the additional increment authorization associated with the Entertainment District / Arena proposal. It was these discussions that led to exploration of whether the south ½ developer's would be interested in waiving its right to seek retail incentives in exchange for the City waiving the its right to seek collection of the penalty if the retail square footage targets were not met.

At the June 26, 2018, City Council meeting, Council opted not to send an amended Project Plan allowing the entertainment district proposal to the Statutory Review Committee for review and recommendation. At the July 10, 2018 City Council meeting, Council opted not to commission

HVS to independently advise on what "net new" tax revenue might be generated from the north ½ development. The "net new" issue had become of interest as community observers began to be concerned about possible competition to their already established business elsewhere in Norman, even though this issue as it related to new revenue to the City overall had been addressed with the transfer adjustment and average annualized growth rate protections in the original project plan. Since the July 17, 2018 Council Study Session no additional work in furtherance of the UNP Project Plan components have been actively pursued by City Staff.

Tax Increment Financing Concept

Tax Increment Financing (TIF) is an economic development tool. It is primarily used to fund public infrastructure in projects by identifying a revenue stream projected to mature upon which project costs can be financed. TIF places the cost burden of the improvements on taxes to be generated from the development itself. By comparison, Transportation General Obligation Bond projects are for public infrastructure improvements that are often followed by economic development activity after the improvements are completed. Examples of this are Tecumseh Road improvements (significant housing activity there), or Lindsey Street improvements (anticipated to revitalize Lindsey Street). However, in General Obligation Bond projects, the tax burden for those improvements is placed on property owners through property tax assessments to pay off the bonds. Another comparison might be revenue bonds for water and sewer improvements. Expansion of capacity for the Water Reclamation facility was funded partially by a temporary sales tax, partly by an excise tax on new development, and partly by revenues from ratepayers. As indicated in the Raftelis Study, the tax burden of these improvements was not solely placed new development through excise taxes, but was shared by ratepayers as well due to policy choices made by City Council's and the voters over the years.

As an example of how a TIF economic development tool can be used to generate a revenue stream for a broader set of public improvements than just those associated with a particular development, DA1 identified as a public infrastructure improvement the extension of the I-35 frontage road on the east side of I-35. Because extension of a frontage road would not normally be a developer's responsibility under then existing Norman development regulations, the developer asked that the City agree to make this improvement from incremental revenues. The statutory term "incremental revenue" means sales taxes or property taxes that are generated in a TIF District, after the TIF District is created, in excess of sales taxes or property taxes that were being generated there before the TIF District was created. The concept is that newly generated taxes from the Project will pay for the Project costs. This is often accomplished by paying for project costs (mostly, if not all, being public infrastructure) up front through securing financing using newly generated taxes as a sufficiently defined revenue stream to secure bank financing. No General Fund revenues were ever pledged to secure payment of project costs – only incremental revenues were used for this purpose.

There have been some arguments claiming all the development in the UNP TIF District would have happened at the same level and at the same pace even without the City agreeing to allow incremental revenues to pay for public infrastructure. The reasoning then states the developer would have had to put in the public infrastructure at its cost under City Development regulations and therefore the use of incremental revenues for public infrastructure has deprived the City of General Fund revenues. While no one disagrees this land along I-35 would have developed at some point in time, those that disagree with this reasoning point out: it is not reasonable or plausible to believe all the UNP Development would have happened on its own at the same pace; some of the traffic and roadway improvements such as the frontage road extension and the improvement on the west side of I-35 would not have occurred as those would not be developer responsibilities under City development regulations; the coordination of design of buildings by one Architectural Review Board, intersections, entrances, connecting landscaping, Legacy Park, Hotel Conference Center, dramatic land purchase discount for NEDC for economic development land, Rock Creek Overpass, all would not have occurred but for the UNP TIF District. The use of property tax revenues to fund project costs (approximately 25% of the increment) would not have been available for City of Norman public infrastructure, but for the UNP TIF.

Although extension of the east side I-35 frontage road from Robinson Street would not have been a developer responsibility under City development regulations, the City agreed to fund this roadway improvement from incremental revenue only if the Developer agreed to reimburse to the City the cost of this particular roadwork if at least 250,000 square feet of retail space built to shell completion was not accomplished by January 1, 2016. This was the City's first "clawback" provision. DA1 was approved on August 22, 2006 and gave the Developer a little less than 10 years to complete about ½ of the projected Lifestyle Center retail space to shell completion by that date. This was early in the 25 year development timeline. The City Council reviewed and approved DA1 in a public meeting and at the same time the Master Development Agreement was approved, which, among other things, provided that 160 acres of land owned by the OU Foundation be transferred to the City as the future site of Ruby Grant Park for less than ½ of the fair market value of the property.

<u>Summary</u>

After much citizen study, and public review of the proposed UNP TIF, the Project Plan was approved in May of 2006. Through collaboration and cooperation, the goals and objectives of the Project Plan were refined and adopted. Implementation began with a Master Development Agreement and DA1. The City agreed to allow up to 60% of incremental sales taxes generated in the District to be available to fund Project Costs. 40% of the incremental sales tax revenue went directly to the General Fund. 50% of the incremental property tax revenue was available to fund Project Costs. 50% of the incremental property tax revenue went directly to the ad valorem taxing jurisdictions. This structure was recommended and approved by the ad valorem taxing jurisdictions through the Statutory Review Committee. Over ½ of the incremental revenue to be generated by the Project was to be deposited directly to the City's General Fund, or to the Schools, County Agencies, or Libraries. The City was deeded 160 acres for Ruby Grant Park at less than ½ price. The Developer committed to cover Traffic and Roadway improvements in excess of $11.55 million after efforts to secure supplemental state and Federal funding sources for the UNP District as well as frontage road improvements, and roadway improvements on the west side of I-35. The Developer and land owner got a 25 year development plan that provided streets, intersections, public park development after land donation, an opportunity for enhanced retail development, and an opportunity to kick off the development with an Embassy Suites Hotel and Conference Center.

While some adjustments in the Project Plan and its implementation were agreed upon by the City Council, Developer, and Land owner along the way, in its first 11 years and after weathering two recessions, over ½ of the planned Project Costs have been allocated, and all components of the Project Plan have been achieved or funded except for a Regional Draw retail component, and a Cultural Facility.

Regarding Development Agreement No. 3 (DA3) Legacy Park, it should not be lost in the discussion that after the Park Design was completed, presented to the Council and the public, the City Council expressed an interest in moving forward with the Legacy Park project ahead of the completion of the required Lifestyle Center retail space. Through collaboration and cooperation, the Developer agreed to the switch in sequencing requested by the City Council and further agreed to a second clawback component to reimburse the City for the construction cost of Legacy Park funded by incremental revenues if the required retail space in the Lifestyle Center was not completed by January 1, 2018. This clawback provision was accepted by the Developer even though under City Development regulations, the developer's obligation is only to donate park land. Under City Development regulations a developer is not required to construct the park or furnish the park amenities.

Development Agreement No. 4 (DA4) focused on unwinding the City's previous commitment to provide financing and funding for the John Q. Hammons Conference Center. As noted above, the City's commitment in that regard was waive by Mr. Hammon in favor of Rock Creek Overpass and Cultural Facility funding.

Development Agreement No. 5 (DA5) was approved by City Council on May 8, 2012, dealt with a number of issues. Those included: committing excess Rock Creek Overpass funding to the Legacy Park and Legacy Park Drive intersection project; solidifying the land donation for Legacy Park; securing a developer commitment to donate up to 2 acres of land for a Cultural Facility; recognizing the square footage of Crest as counting toward the required Lifestyle Center square footage; establishing a Business Improvement District concept for maintenance of Legacy Park with $900,000 of incremental revenue coupled with $1.1 million of private business contributions over a ten year period (in place of an endowment concept in DA3); among others.

Development Agreement No. 6 (DA6) was approved by City Council on January 28, 2014, to implement an agreement between NEDC and Quality Jobs employer (IMMY) regarding a lot sale to establish IMMY's headquarter and manufacturing operation in the UNP TIF District north of Rock Creek Road. NEDC agreed to sell the lot at a price IMMY felt was fair, but below an amount that NEDC wanted. Because IMMY was a Quality Jobs Employer, the City agreed to bridge the land sale price between the parties by IMMY agreeing to create Quality Jobs which would be incentivized with job creation incentive payments funded by incremental revenues the payment of which was assigned to NEDC. This arrangement, through cooperation and collaboration, allowed the project to move forward, and was approved by City Council after public discussion and a public vote. Incentive payments have been made annually as IMMY has outperformed its Quality Job creation commitment from what was required in DA6.

In addition a Master Operating Agreement, a Master Financing Agreement, and an Economic Development Agreement have all been approved by City Council. An Amendment to Development Agreement No. 5 (DA5a) was also approved by City Council on April 28, 2016. Most components of the Project Plan have been complete or in progress after the first eleven years of the 25 year Development period. The two remaining components of the Project Plan that have been more difficult to move forward are the Regional Draw component and the Cultural Facility. Although City Council a number of years ago received public input regarding the Cultural Facility, no project to be located within the increment district has come forward.

Regarding the Regional Draw component, the changing consumer preference to internet retail shopping has been discussed over the past couple of years, and there has been little progress on achieving a Regional Draw Retail component. In 2016, the City Council, UNP, and UTC agreed in DA5a to jointly fund a study performed by Callison /RTKL to study and provide advice on how to achieve the Regional Draw component and to recommend a Master Plan for the area north of Rock Creek Road. The Callison/RTKL report was finished late in the summer of 2017. The detail of how the recommendation was brought forward for Council review and input has been detailed above. Council members were briefed in small group meetings in July of 2017 regarding the Master Plan recommendation and staff received positive feedback from Council members. The Master Plan recommendation was publically presented to the Council last fall. The recommendation from Callison/RTKL included an Entertainment District anchored by an Arena, new urbanism housing, additional office, and manufacturing uses that could spur additional quality job employment opportunities for the community. It is the recommendations from the jointly funded Callision/RTKL Master Plan that have appear to have created a diversity of public opinion in the community regarding the future of the UNP.

There has been significant public input and discussion on this project, including Planning Commission, Statutory Review Committee, Citizens UNP TIF Oversight Committee, as well as a number of Council conferences, study sessions, and small group meeting. Certainly, it is Council's responsibility to set the City's policy going forward regarding future investment into the UNP TIF District. As noted earlier, little, if any, Staff work toward implementation of the UNP TIF Project Plan goals and objectives has occurred since the July 17, 2018 Council Study Session. We will be available to assist in accordance with the direction given by a majority of Council. Please let me know if you have additional questions or concerns.

Cc Mary Rupp, City Manager
Anthony Francisco, Finance Director