



# City of Norman, OK

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

## Master

**File Number: K-1314-106**

**File ID:** K-1314-106

**Type:** Contract

**Status:** Non-Consent Items

**Version:** 1

**Reference:** Item No. 25

**In Control:** City Council

**Department:** Legal Department

**Cost:**

**File Created:** 01/23/2014

**File Name:** Development Agreement No. 6 NEDC and IMMY

**Final Action:**

**Title:** CONTRACT NO. K-1314-106: A CONTRACT BY AND BETWEEN THE NORMAN TAX INCREMENT FINANCE AUTHORITY, NORMAN ECONOMIC DEVELOPMENT COALITION AND IMMUNO MYCOLOGICS, INC. TO FURTHER ECONOMIC DEVELOPMENT IN UNIVERSITY NORTH PARK.

**Notes:** ACTION NEEDED: Acting as the Norman Tax Increment Finance Authority, motion to approve or reject Contract No. K-1314-106 with Norman Economic Development Coalition and Immuno Mycologics, Inc., and, if approved, authorize the execution thereof.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 01/28/2014

**Agenda Number:** 25

**Attachments:** K-1314-106.pdf, TIF Oversight Committee Letter of Support and Meeting Minutes

**Project Manager:** Kathryn Walker, Assistant City Attorney

**Entered by:** kathryn.walker@normanok.gov

**Effective Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File K-1314-106

Body

**BACKGROUND:** Council approved the University North Park (UNP) Tax Increment Finance District (TIF) Project Plan (Ordinance O-0506-66) on May 23, 2006. The Project Plan authorized public improvements within the TIF, including Traffic and Roadway Improvements, a Hotel Conference Center, a retail-based Lifestyle Center, Legacy Park, and an Economic Development component that would foster special employment opportunities in Norman.

The Economic Development component of the UNP TIF outlined in the Project Plan provides for up to \$8.25 million in funding to foster special employment opportunities. The Master Development Agreement (Contract K-0607-44) further refined this focus by identifying sixty (60) acres of land that could be purchased from the UNP Developer (OU Foundation and its subsidiaries) by the Norman Economic Development Coalition (NEDC) at below-market prices in an effort to provide incentive tools for attracting future employers 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 to be purchased by NEDC for the same purpose.

A final plat was initially 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 contained 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. NEDC's development model included repaying the land acquisition costs from future lot sales.

On September 21, 2010 the Norman Tax Increment Finance Authority (NTIFA) and City Council approved Resolution R-1011-39 concurring in NEDC's purchase of the thirty (30) acres contained in the plat for University North Park Corporate Center Section 1 and providing accumulated UNP TIF Economic Development revenues as back up security for a loan from Republic Bank (the "Lender").

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 in UNP TIF 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 a reduced price under prior UNP TIF Development Agreements and is planned for potential employers that will operate advanced manufacturing type 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. NEDC closed on the second land purchase on December 5, 2013, which actually included 31.67 acres, all at the reduced price of \$1.25 per square foot. The Lender also agreed to combine the loan for the first thirty acres with the loan for the second thirty acres while reducing the interest rate by one percentage point.

Having finalized the purchase of the full 61.67 acres of UNP TIF Economic Development Property, NEDC is now working towards finalizing the public infrastructure improvement loan (streets, water lines, sewer lines, storm water drainage facilities, etc.) that will be supplemented by the EDA grant. In working towards a closing on the infrastructure loan, the Lender requested that the NTIFA explicitly expand the approved purposes of the pledge of TIF Economic Development revenues authorized by Resolutions R-1011-39 and R-1213-64 to be used not only as security for land acquisition, but also as security for the infrastructure loan. Council approved Resolution No. R-1314-78 expanding the purpose of the original pledge of security on December 10, 2013, following a Study Session to discuss these efforts on December 3, 2013.

With the land purchase finalized and the infrastructure loan close to finalization, NEDC is ready to move forward with its first lot sale. NEDC has 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, is required. Accordingly, Development Agreement No. 6 is coming forward to the Council, sitting as Trustees for the NTIFA, for consideration.

**DISCUSSION:** 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 has 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. IMMY is 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 has reviewed IMMY's business expectations over the next several years and is 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 has 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 recently for its tests that are widely used in areas like sub-Saharan Africa where the necessary infrastructure for adequate healthcare is lacking. The company has doubled its work force to thirty employees. 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 has 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. Sean currently serves on the Board of the Norman Chamber of Commerce. IMMY was approached by Don Wood, Executive Director of NEDC about the possibility of locating its future site on economic development land in the UNP TIF District. Discussions and negotiations about this site for IMMY have actually been on-going for 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 over the last two years, it was clear that Council was comfortable with the concept of providing incentives with clawbacks as an approach to economic development. According to a report by The Pew Center on the States issued in December 2012 and titled "Avoiding Blank Checks - Creating Fiscally Sound State Tax Incentives", there are two critical steps that should be taken at the outset of an incentive program to protect the government agency from unnecessary risk. First, budget implications of the proposed incentives should be discussed and understood. Second, the size of the tax incentives should be managed by setting limits on their price tag. Contract No. K-1314-106 is the NTIFA's first development agreement with a qualified employer for economic development incentives.

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 to 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. The NEDC Board will consider this Development Agreement on Monday, January 27th. Prior discussions at NEDC Board meetings indicate

full agreement with this structure considering IMMY's Norman based roots, IMMY's growth potential, and the potential effect the first lot sale may have on the marketability of other UNP TIF ED lots with the construction of the building for the first user coupled with the ability to complete infrastructure for all the UNP TIF ED property within this calendar year.

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.

**RECOMMENDATION:** NEDC appears to be satisfied that IMMY is the right type of company to locate on the UNP TIF ED property. All that is required of the NTIFA is to pledge payment for Quality Jobs that are created by the Company locating in the UNP TIF District only after 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. Staff recommends approval of Contract No. K-1314-106.