



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1314-138

File ID: K-1314-138

Type: Contract

Status: Non-Consent Items

Version: 1

Reference: Item No. 41

In Control: City Council

Department: Legal Department

Cost:

File Created: 04/17/2014

File Name: Participation Agreement for Frontage Road

Final Action:

Title: CONTRACT NO. K-1314-138: A PARTICIPATION AGREEMENT BY AND BETWEEN THE NORMAN TAX INCREMENT FINANCE AUTHORITY, NORMAN ECONOMIC DEVELOPMENT COALITION, INC., AND UNIVERSITY NORTH PARK, L.L.C., FOR COST PARTICIPATION IN THE INTERSTATE DRIVE EAST EXTENSION PROJECT.

Notes: ACTION NEEDED: Acting as the Norman Tax Increment Finance Authority, motion to approve or reject Contract No. K-1314-138 with the Norman Economic Development Coalition, Inc., and University North Park, L.C.C.; and, if approved, authorize the execution thereof.

ACTION TAKEN: _____

Agenda Date: 04/22/2014

Agenda Number: 41

Attachments: UNP Frontage Road Project Map, Bid Summary, Appropriation & Cost Share, NEDC_City cost share exhibit, Cost Participation Agreement with UNP signature

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:

Text of Legislative File K-1314-138

Body

BACKGROUND:

Project Plan and UNP TIF District

In 2002, the City of Norman approved University North Park Planned Unit Development ("PUD") for approximately 585 acres of land located between Robinson Avenue and Tecumseh Road, immediately east of I-35. At the time the PUD was approved, both the University of Oklahoma ("OU") and the City of Norman anticipated that an interchange and overpass connecting Rock Creek Road over I-35 and a means of access to I-35 would be constructed with Federal and Oklahoma Department of Transportation ("ODOT") dollars. By 2004, ODOT had denied the request to construct such an interchange and overpass.

In May 2006, Council voted to create a tax increment financing ("TIF") district in the University North Park area and adopted the UNP TIF District Project Plan ("Project Plan"). The Project Plan was developed after a

Citizens TIF Committee studied the concept of creating a TIF District on property owned by the University of Oklahoma north of Robinson Street and immediately east of Interstate 35. The concept and proposed Project Plan was also studied and approved by a Statutory TIF Committee composed of representatives primarily from ad valorem taxing jurisdictions affected by the proposed TIF District. TIF Districts authorized under Oklahoma Statutes allow the apportionment of new sales taxes and ad valorem taxes generated by economic development activity within the TIF District, referred to as "incremental revenues".

Although TIFs typically apportion 100% of the incremental revenues to fund TIF Project costs, the Norman's UNP TIF Project Plan reserved 40% of the sales tax incremental revenues for the General Fund and 50% of the ad valorem incremental revenues for the ad valorem taxing jurisdictions. The Project Plan provides for up to \$54.725 million to be made available for the development of a Conference Center, Legacy Park, Lifestyle Center, Economic Development, and Traffic and Roadway Improvements. In 2008, the Project Plan was amended to provide funding for the Rock Creek Overpass and cultural facilities in exchange for the developer waiving the Conference Center contribution of \$15 million. This change redirected Project Plan funding without increasing the maximum financial commitment of the City or the ad valorem taxing jurisdictions.

In moving forward to implement the Project Plan, in August of 2006, the Council unanimously adopted a Master Operating Agreement which set forth the responsibilities of each party in regards to implementing the Project Plan. Over the years since the adoption of the Project Plan, Councils, acting as the Norman Tax Increment Finance Authority ("NTIFA") Trustees, have administered the UNP TIF funding authorization through a series of Development Agreements providing for expenditures to date in the following categories :

Traffic and Roadway Improvements - \$ 5,289,310
Rock Creek Road (Conference Center) - \$ 5,764,478
Legacy Park (in progress - Contract amount shown) - \$ 6,974,818
Economic Development - \$ 1,396,008
Engineering and Professional - \$ 1,222,560

TOTAL - \$20,647,174

TIFs are typically used as financing tools to support public infrastructure and other project costs to further spur private economic development investment. In the UNP TIF, some Project Plan components have been funded from accumulated UNP TIF revenues and some have been funded through debt financing of up to \$14.56 million with the OU Foundation being the original lender. This original debt issuance was refinanced by the NTIFA last summer to provide a shortened repayment term and to lock in a favorable interest rate of 3.81%. The current UNP TIF Loan Balance is \$14,215,000, through a private placement financing with Branch Banking and Trust Company. From a review of ad valorem tax records of property within the UNP development, there has been over \$168 million of private investment in buildings and annual inventory within the UNP TIF District.

Traffic and Roadway Improvements

In August of 2006 the Council unanimously adopted Development Agreement No. 1 which outlined the traffic and roadway improvements to be made under the Project Plan and outlined responsibilities for initial development activities. The identified traffic and roadway improvements included improvements at the following locations:

- 24th Avenue N.W. @ Robinson (completed)
- Robinson @ East I-35 Drive (completed)
- Robinson @ West I-35 Drive/Crossroads Blvd.
- Tecumseh Road @ Flood/24th Avenue N.W.
- Tecumseh Road @ East I-35 Drive (partially completed)
- Tecumseh Road @ West I-35 Drive (partially completed)
- I-35 Frontage Road - Robinson to Tecumseh (partially completed)
- 24th Avenue Intersection Improvements (5 intersections along 24th Ave N.W.) [So far, three of the five planned intersections on 24th Avenue N.W. have been constructed (Mount Williams, Conference Center Drive, and Legacy Park Drive) as needed by development progress.]

Development Agreement No. 5, adopted by NTIFA/Council in May of 2012, prioritized remaining traffic and roadway improvements into two phases:

Phase I Improvements:

Robinson Interchange @ East Interstate Drive (completed summer of 2012)

Design of Robinson Street @ West I-35/Crossroads Blvd. (design concepts presented to Council in Fall of 2013)

Completion of Frontage Road from Conference Drive to 24th Avenue N.W. (for Council consideration at this time)

Phase II Improvements:

Robinson Street @ West Interstate Drive/Crossroads Blvd.

Tecumseh Road @ East Interstate Drive

Tecumseh Road @ Flood/24th Avenue N.W.

Tecumseh Road @ West Interstate Drive improvements

Completion of Frontage Road from Conference Drive to 24th Avenue N.W.

The items before NTIFA/Council relate to completion of the frontage road with storm drainage facilities, the intersection of the frontage road with 24th Avenue N.W., and installation of a public waterline. The Interstate Drive East Extension Project (the "Project"), includes the following components:

1. Construction of approximately one mile of frontage road
2. Construction of a modern roundabout
3. Construction of the intersection of 24th Avenue NW with Interstate Drive East/Corporate Center Drive including decorative pavement and signalization
4. Installation of approximately one mile of 12-inch public waterline and appurtenances
5. Construction of storm drainage facilities

Attachment A highlights the alignment of the frontage road extension. The new intersection connecting the frontage road to 24th Avenue N.W. also connects to Corporate Center Drive, which will be constructed concurrently by the Norman Economic Development Coalition ("NEDC"). At approximately one-half mile north of the Rock Creek Road Overpass, the proposed frontage road curves back to the east towards 24th Avenue N.W. Because of a need to connect to the intersection at 24th Avenue N.W. at a right angle, the roadway will curve east at 90 degrees away from Interstate 35 to then tie into 24th Avenue N.W. The original curve designed was rated at 25 miles per hour and the design speed of the roadway was 40 miles per hour. It was determined that a roundabout would best facilitate the flow of traffic and allow a possible future expansion north to Tecumseh Road. The roundabout eliminates stop signs, allows traffic to flow freely, and maximizes the area available for the development of University North Park. Private utilities will be relocated as part of the Project construction. The water line will be extended from just south of Rock Creek Road and will parallel the new roadway until it reconnects at 24th Avenue N.W.

The Frontage Road Project design was completed in February of 2013 with an engineer's estimate of \$4,580,914.60. Bid documents and specifications for constructing the Project were advertised in accordance with the Public Competitive Bidding Act. Five (5) potential bidders purchased plans and specifications and two (2) bids were received on February 27, 2014. The low bidder was Silver Star Construction Company, Inc. of Moore, Oklahoma in the amount of \$4,091,000 or approximately \$1,105,000 less than the next lowest bidder and \$489,914.60 less than the engineer's estimate.

Staff has been working collaboratively with NEDC and UNP LLC to address funding options for the Project. Four related items are before NTIFA/Council for consideration:

- Consideration and Award of Bid No. 1314-46, Contract No. K-1314-114 with Silver Star Construction, Change Order No. 1 to Contract No. K-1314-114 and Appropriation of Funds [Note: there are also 15 easement items associated with the Project that will be coming forward with the Project.]
- Consideration of Contract No. K-1314-138 with University North Park, LLC and NEDC for Cost Participation in Frontage Road Project
- Consideration of Resolution No. R-1314-48 declaring a payback project for the Interstate Drive Water Line

Project

- Consideration of Contract No. K-1314-133 with SMC Engineers for design of the Interstate Drive Water Line Project

Development Agreement No. 1 (approved in 2006), estimated the total frontage road (1.7 miles) to be \$2.4 million. A segment of the frontage road (0.6 miles) was constructed in 2007/2008 at a cost of \$659,305, with \$1,740,695 of the estimate remaining. In 2012, when Development Agreement No. 5 was approved, that estimate was revised to \$1,525,000 (a reduction of approximately \$215,695). The FYE14 budget included \$1,923,500 for the Frontage Road Project with \$1,404,030.50 for roadway and drainage (a reduction of approximately \$120,969) and \$519,469.50 for intersection improvements. The original scope and budget for the Frontage Road, without the intersection, included a three lane roadway with curb and gutter, sidewalk on the east side of the road, drainage improvements, and the tie-in of Interstate Drive into 24th Avenue NW.

During the design phase, several items were added to the original scope to evaluate whether cost savings could be realized in what has been a favorable bidding environment, and to avoid needing to rework improvements if some components were added later as development occurred.

The storm water design was expanded from only box culverts underneath the roadway to box culverts and additional storm water system facilities to serve the roadway and surrounding developments (\$369,515). This design will utilize regional storm water detention. As noted above, a roundabout was added to the project (\$194,386) to serve as a traffic control device and slow down traffic so that the 90 degree curve could be safely navigated. The need for additional fill material (\$325,000) for the roadway was identified after the topographical survey was completed. The development of NEDC's Corporate Center and Advanced Manufacturing Center necessitated some additional intersection improvements at 24th Avenue N.W. and Interstate Drive/Corporate Center Drive (\$385,680). A 12-inch public waterline was also added to the project (\$356,000).

Waterline - Payback Resolution and Appropriation from Water Fund Balance.

UNP, LLC, the Developer of the parcels served by the waterline improvements contained in the project bid has asked for the waterline improvements to be included in the project subject to payback by UNP under the City's payback ordinance. This request is like NEDC's current circumstance of being subject to an existing 24th Avenue NW Waterline Payback Project when they apply for a permit and connect to the waterline along 24th Avenue N.W. that was constructed as a Payback Project in April of 2008.

The City's Payback Ordinance. Ordinance No. O-9697-30, adopted by Council on February 11, 1997, establishes a process by which the Norman Utilities Authority ("NUA") can recover the costs associated with the extension of utility lines through or by undeveloped property. Sections 19-207 through 19-209 of the City Code detail the procedures for implementing a payback project. Pursuant to the Code, NUA can recover the costs for right of way acquisition, engineering, utility relocations, and construction from property owners who subsequently develop their property and connect to the utility lines during the payback period of up to twenty (20) years. For the first fifteen years, the cost is adjusted for inflation using the Engineering News Record Construction Cost Index (CCI). The annual inflation factor will be 4.13%, based on the January 2010 and January 2000 ENR CCI's of 8660 and 6130, respectively. At the end of the year fifteen and for each year thereafter, that cost will be reduced by twenty percent (20%). Based on the bid amount for the waterline portion of the Project and the inclusion of a five percent (5%) contingency, the estimated payback amount for construction is \$356,000. Including the cost of design, the total estimated payback amount is \$373,000. The final payback amount will be determined based on the actual cost of the waterline and appurtenances installed and accepted by the City. Resolution R-1314-48 declares the waterline installation as a Payback Project.

As shown in Exhibit A to R-1314-48, University North Park LLC owns all of the property along the proposed waterline and would normally be responsible for the construction of a 12-inch water line when they develop. Property ownership and property descriptions are shown on Exhibit B to R-1314-48. By adopting Resolution No. R-1314-48, the NUA would be able to recover their cost of the project from UNP LLC when the adjacent land develops within the 20 year term of the payback project. The pro-rata share of the project costs is distributed based on the developable frontage along Interstate Drive where the waterline is constructed. Based on initial frontage estimates of 7,020 feet on both side of the roadway, the following parcels will be responsible for the project costs estimated at \$373,000:

- Parcel 1A, University North Park LLC, 4,965 feet of frontage, 70.7%, estimated cost of \$263,710.
- Parcel 1B, University North Park LLC, 2,055 feet of frontage, 29.3%, estimated cost of \$109,290.

At the time of project completion, a second Resolution will be forwarded to Council for consideration finalizing the pro-rata shares of the project costs for the property owners.

Water Fund Appropriation: The 12 inch waterline included in the Project was not anticipated during the FYE 2014 NUA budget. If NUA/Council adopts Resolution R-1314-48, then an appropriation of Fund Balance from the Water Fund (031) will be needed to initially fund the waterline project. These funds will be paid back by UNP LLC or their successors through the City's payback process as future building permits are issued for adjacent properties served by the waterline. The total appropriation from the Water Fund Balance for the payback project is \$373,000.

Contract No. K-1314-133: SMC Consulting Engineers ("SMC") prepared the design and Contract No. K-1314-133 would authorize payment to SMC for the design of the waterline improvements at a lump sum cost of \$17,000. This represents approximately 5% of the as-bid construction cost, and is a reasonable cost for these services. Design costs may be included in the Payback Project for reimbursement to NUA. These costs are also included in the appropriation from the Water Fund Balance to cover the costs of Design and Construction.

Frontage Road and Intersection Funding

Bid No. 1314-46, Contract No. K-1314-114, Change Order No. 1 to Contract No. K-1314-114 and related appropriation: This item will award the bid of the Project to the low bidder, Silver Star Construction, and approve the related contract and bonds. Although sidewalks were included in the original design, Staff is not recommending this be included as part of this Project as there are no sidewalks on the existing Frontage Road to the south of Rock Creek Road. Additionally, with new development occurring adjacent to the Frontage Road Project, some planned paving has already been completed. Change Order No. 1 to K-1314-114 removes sidewalk construction from the Project and reduces the pavement quantities, resulting in a \$190,941.15 reduction to the construction contract for a total contract amount of \$3,900,058.85.

As discussed, the FYE Budget provides \$1,923,500 for roadway, intersection, and storm sewer improvements for this Project. An additional appropriation of accumulated TIF revenues in the amount of \$882,656 is proposed to cover budget shortages and to include the roundabout, after deduction of the sidewalks. This leaves an additional shortage from budgeted funds of \$755,196 that are the result of intersection improvements, and up-sizing storm sewers. UNP LLC and NEDC, will pay these additional costs pursuant to Contract No. K-1314-138. Both NEDC and UNP have requested that an arrangement similar to that payback process for the waterline discussed above be utilized to address the addition of the storm sewer improvements and the intersection improvements benefiting their property.

Storm Drainage and Intersection Cost Participation - Contract No. K-1314-138: This Participation Agreement sets forth the obligations of NEDC and UNP related to their financial contributions to the storm sewer and intersection portions of the Project. Under this agreement, UNP agrees to pay for the portion of storm sewer improvements included in the design that allow these improvements to be made at one time rather than potentially needing to rework improvements in future years as the property develops. Staff has identified such costs in the amount of \$369,516. This cost participation agreement is patterned after the waterline payback ordinance. However, rather than allowing up to fifteen (15) years to reimburse the NTIFA with a progressively declining obligation after the 15th year, this agreement requires payment not later than five (5) years from the date construction is completed, or earlier if a building permit is issued for benefited properties. There is no progressively declining obligation. They will pay a 2% administrative fee and the outstanding balance will be adjusted annually using the same index utilized in the City's waterline payback ordinance with a maximum annual index of 4%. UNP will reimburse NTIFA this amount on the earlier of five (5) years from the date of approval of this contract or upon submission of a building permit for the benefiting property shown on Exhibit B to K-1314-138.

Similarly, under this agreement, NEDC will reimburse the NTIFA for the portion of the intersection of 24th

Avenue and Interstate Drive East/Corporate Center Drive attributable to and benefiting the NEDC development in the amount of \$385,679.80. NEDC will reimburse NTIFA this amount no later than five (5) years from the date construction is completed, or earlier if a building permit is issued for any portion of the benefiting NEDC property in University North Park.

RECOMMENDATIONS:

1. Staff and our consultant have reviewed the bids and recommend that Bid No. 1314-46 for the Interstate Drive East Extension Project be awarded to the low bidder, Silver Star Construction Company, Inc., for \$4,091,000.

2. Staff further recommends that, upon approval of Bid No.1314-46, the following contract and bonds, less a change order deduction for sidewalks of \$190,941.15 for a net contract amount of \$3,900,058.15 be approved:

Contract No. K-1314-114

Performance Bond No. B-1314-70

Statutory Bond No. B-1314-71

Maintenance Bond No. MB-1314-72

3. Staff further recommends approval of Contract No. K-1314-138 by and between NTIFA, NEDC and UNP for Cost Participation in the Frontage Road Project.

4. Staff further recommends NUA approval of Resolution R-1314-48 declaring a Waterline Payback Project for the waterline being constructed with the Frontage Road Project.

5. Staff further recommends approval of Contract No. K-1314-133 with SMC Consulting Engineers, PC for the design of the Interstate Drive Water Line Improvements.

6. As noted, \$1,923,500 was included in the FYE14 Budget for this Project. To provide necessary immediate funding, Staff further recommends appropriating \$1,637,852 (\$882,656 NTIFA project budget shortages; \$385,680 NEDC intersection cost participation agreement; \$369,516 UNP LLC storm sewer cost participation agreement) from University North Park TIF General Fund Revenue Account (Account No. 057-0000-253.20-00) to the Interstate Drive East Extension Construction (Account No. 057-9545-431.61-01 Project No. UT0009)

7. Staff further recommends appropriating \$373,000 from the Water Fund Balance (Account No. 031-0000-253.00-00) with \$17,000 of that amount going to the Interstate Drive Water Line Improvements Design (Account No. 031-9360-462.62-01, Project No. WA0200) and \$356,000 (including contingency) of that amount going to the Interstate Drive Water Line Improvements Construction (Account No. 031-9360-462.61-01, Project No. WA0200).

This item will be presented at Council's Pre-meeting Conference on April 22nd. Staff will be available there and at the regular Council meeting to answer questions or provide additional information as requested.