



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1920-82

File ID: K-1920-82

Type: Contract

Status: Non-Consent Items

Version: 1

Reference: Item 35

In Control: City Council

Department: Legal Department

Cost:

File Created: 10/31/2019

File Name: Amended and Restated Master Operating and Dev Agreement

Final Action:

Title: CONTRACT K-1920-82: AN AMENDED AND RESTATED MASTER OPERATING AND DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF NORMAN, OKLAHOMA, NORMAN TAX INCREMENT FINANCE AUTHORITY, NORMAN ECONOMIC DEVELOPMENT COALITION, UNIVERSITY TOWN CENTER, LLC AND UNIVERSITY NORTH PARK, LLC.

Notes: ACTION NEEDED: Acting as the City Council and the Norman Tax Increment Finance Authority, motion to approve or reject Contract K-1920-82, an amended and restated Master Operating Agreement; and, if approved, authorize the execution thereof.

ACTION TAKEN: _____

Agenda Date: 11/26/2019

Agenda Number: 35

Attachments: K-1920-82

Project Manager: Kathryn Walker, 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:
1	City Council	11/05/2019					

Text of Legislative File K-1920-82

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 up to \$54.725 million, including Traffic and Roadway Improvements, a Hotel Conference Center and Cultural Facilities, Legacy Park,

Lifestyle Center and an Economic Development Component.

Since the creation of the UNP TIF, a series of development agreements have been approved by Council and the Norman Tax Increment Finance Authority (NTIFA) to further the components of the Project Plan. To date, approximately \$29.6 million of the tax increment generated within University North Park ("UNP") has been expended on Initial Project Activities, Traffic and Roadway improvements, Legacy Park improvements, and Economic Development. Since 2006, more than \$40 million in sales and ad valorem tax increments have been apportioned, each to project costs and to the City's General Fund and Capital Fund pursuant to the Project Plan.

In recent months, and after several years of declines in the rate of growth in the City's overall sales tax, Council directed Staff to develop options for reducing or eliminating the incremental tax apportionments associated with the UNP TIF, to help to address General Fund financial issues. Ultimately, Council directed Staff to proceed with ending the UNP TIF tax apportionments by eliminating or reducing the project authorizations to an amount less than the apportioned tax funds on hand. After being advised of possible litigation related to unilaterally reducing project authorizations and potentially impacting adopted development agreements, Council adopted Resolution R-1819-83 on March 26, 2019 that set forth the following:

- That, the City desires to enter into binding, mutually acceptable agreements by June 30, 2019 providing for early termination of the UNP TIF tax increment allocation.
- That, the City Manager shall direct City Staff to negotiate with UNP development partners, NEDC, and other community partners to reach a mutually agreeable resolution of all other outstanding matters related to the UNP TIF by June 30, 2019.
- That, the City Manager is directed to prepare the City's budget for FYE 20 on the aforementioned goal of ending the UNP TIF increment allocation by June 30, 2019, and outlining where said funds are budgeted.

The same evening, Council approved a Memorandum of Understanding ("MOU"; contract K-1819-116) to provide a framework within which the parties could work together to determine how best to address the outstanding authorizations in the Project Plan and related agreements. The MOU contained an aggressive schedule in recognition of Council's desire to address the increment allocation by the end of the then-current fiscal year. Although the negotiations have taken longer than anticipated, the parties have all remained committed to negotiating Project Plan amendments and a final development agreement that would end the sales tax increment effective June 30, 2019.

Council was kept apprised of the negotiations through public meetings on May 14, May 28 and June 18, 2019. Executive sessions were held on June 11 and June 18 to discuss possible claims and defenses related to threatened litigation regarding the changes to the UNP TIF. On June 25, 2019, Council adopted Resolution R-1819-124 which formally directed Staff to draft Project Plan amendments and a development agreement consistent with an attached Term Sheet and directed that the Statutory TIF Committee be convened for the purpose of

consideration of such Project Plan amendments. The Statutory TIF Committee met twice, and made a positive recommendation on the proposed Project Plan amendments in August. Council held its first public hearing on the amendments on October 22, 2019 and the second hearing and vote on the amendments is scheduled for November 5, 2019. The Amended and Restated Master Operating Development Agreement (attached) will be considered on November 5, 2019 along with the Project Plan amendments. This Agreement was discussed by Council on October 15, 2019.

DISCUSSION: The Amended and Restated Master Operating Development Agreement (the "Agreement") is consistent with the Term Sheet adopted by Council in June. It defines the remaining scope of the UNP TIF Project Plan, to include Traffic and Roadway Improvements, Recreational Facilities, a Town Center development, and continued stimulation of quality employment opportunities. The Agreement sets for the term for the sales tax increment (expiring effective June 30, 2019) and the ad valorem increment (expiring upon the earlier of full collection of the 2019 ad valorem tax increment assessments or April 30, 2020). It acknowledges that the TIF District will exist until all funds are spent per the Local Development Act.

The Agreement recognizes the continued existence of the UNP TIF Citizen's Development Oversight Committee as set forth in the Amended Project Plan ("2019 Plan"). It acknowledges that it is still intended that the development of the remaining property be done in conformance with University North Park Planned Unit Development Plan (PUD) currently in existence, but recognizes that under City Code, the property owners could request an amendment to the PUD. It recognizes the continued existence of covenants and restrictions and releases the Parties from a cooperative master planning effort recognized in previous development agreements. It recognizes the Architectural Review Design Guidelines and the process for amending such guidelines in place now, while removing the requirement that the City approve all amendments to the guidelines.

The City will continue to appoint members to the Development Oversight Committee, review development and building applications in UNP, review and consider amendments to the PUD, consider authorizing and approving development agreements where necessary or appropriate to implement the remaining portions of the Project, consider financing (if needed) for Traffic and Roadway Improvements and the Recreation Facility (which may be partially funded by Sales Tax Revenue Notes issued by the Norman Municipal Authority and secured by Norman Forward Sales Tax proceeds), and related contracts, designs and specifications.

UNP, LLC and UTC, LLC will submit any proposed amendments to the PUD plan as required by City Code, negotiate and approve development agreements where necessary or appropriate, prepare and submit proposed designs for any public facilities for which Town Center costs are requested, cause remaining development to occur in compliance with applicable laws, ordinances and regulations, and enter into contracts for design and construction of certain improvements.

On May 14, 2019, Council ratified the engagement of RSM US, LLP to conduct a Special Audit of the UNP TIF funds as set forth in the MOU previously approved by Council in March. The

auditors verified samples of all relevant calculations contemplated in the UNP TIF Project Plan and the adopted UNP TIF Accounting Procedures (Resolution R-0607-69), including incremental sales and ad valorem tax apportionment revenues, deposits of revenues into the Norman Tax Increment Finance Authority Trustee account, transfer adjustments, annual growth rate adjustments, and payment of administrative fees. The final report, which will also be presented to Council on November 5, 2019, found some errors to the benefit of the General Fund and some errors to the benefit of the TIF fund. The net result and ultimately the recommendation of the audit was to transfer \$256,048 to the UNP TIF funds. Although we believe this will result in more funds than may be needed for the completion of the authorized projects in the Project Plan as amended, it is our recommendation that we make the transfer as indicated by the audit. The Local Development Act, 62 O.S. §861(C) requires that any collections in excess of project costs should be paid into the funds of the respective taxing entities. The errors should be corrected so that each taxing jurisdiction can be assured that Section 861 will be complied with.

TIF increment revenues collected in accordance with the 2019 Plan will continue to be held in a separate escrow account and withdrawals will be made for project costs after a disbursement request is made. The City will continue to account for UNP TIF-related expenses in the City's general ledger and in its Comprehensive Annual Financial Report.

Each component to the Project Plan is treated consistently with the Term Sheet adopted by Council in June.

Traffic and Roadway Improvements: Funding in the amount of \$5,024,394 is provided via the 2019 Project Plan for the remaining traffic projects (Robinson at West I-35 Drive/Crossroads Blvd.; Tecumseh Road and Flood & 24th Ave.; Tecumseh Road and Interstate Drive East; Tecumseh Road and Interstate Drive West). As outlined in the previously approved Term Sheet, the 2009 Traffic Impact Analysis for the University North Park development affirmed the need for the specific traffic projects in the UNP TIF Project Area, and confirmed that if the development went forward as planned, those specific improvements should be sufficient to handle the traffic at a Service Level of "D". If the University North Park Planned Unit Development plan changes, as new areas come forward in UNP for final platting, the developer of each area will be treated like other developers in the City in regards to traffic improvements. Additionally, as stated in the Term Sheet, the previous requirement in Development Agreement No. 1 that the Developer would pay for any of the listed traffic projects in excess of \$11.55 million is waived. The listed projects done so far have cost almost double their 2006 estimate set forth in Development Agreement No. 1. The scope and costs of these projects have changed, in some cases dramatically, over the years due to development in this area of Norman. For example, although portions of the required improvements to Tecumseh Road at Flood and 24th have been completed, the remaining project components are now estimated to cost \$9.3 million (compared to a 2006 budget of \$915,633) and includes 2 new northbound lanes on Flood Avenue. Because to the re-routing of U.S. Highway 77 south of Tecumseh, these improvements will now involve Federal Highway Administration oversight that differs from what was anticipated in 2006.

UNP, LLC reaffirms its previous commitment to construct and fund a portion of an entrance to

the development at Tecumseh Road, similar to the entrance that exists at Robinson. The Agreement acknowledges that provisions in previous agreements related to the Conference Center have all been satisfied.

Recreational Facility Components: Section 12 of the Agreement recognizes Council action in January 2019 (Resolution R-1819-72) in which it requested that the Statutory Review Committee approve of the City's use of funds set aside in the Project Plan for a "Cultural Facility" as a supplement to planned Norman Forward recreational facilities, including the Indoor Aquatic Center and the Multi-Sport Facility. In the MOU approved by Council in March, the parties agreed to determine if some or all of these recreational facilities would be located within the UNP Increment District. Ultimately, Council chose to locate the two Norman Forward projects within the UNP Tax Increment Area, just north of Embassy Suites. Under this agreement, and consistent with Term Sheet and the 2019 Project Plan, \$5,154,762 in TIF funds are set aside for the Recreation Facilities for land acquisition (donation of 2 acres, sale of an additional 10 acres to the City for \$2,069,971). It recognizes the final site selection within the parcel north of Embassy Suites and south of Rock Creek Road will be informed by design of the project and obligates the parties to work together to select a final specific site for acquisition. It also sets forth certain timelines - March 31, 2020 for final site selection; closing on acquisition no later than June 30, 2020 or the date of bond financing; commencement of construction by January 1, 2020; and efforts to open the projects by October 1, 2022.

The Agreement also recognizes the provision in the adopted Term Sheet and the 2019 Project Plan for funds in the renamed Recreation Facility category of \$350,000 to offset the anticipated annual contributions by Norman Public Schools to the operation of the Indoor Aquatic Center, and \$2,734,791 as a construction supplement for the Recreation Facility component.

Legacy Park Components: The Agreement modifies the Legacy Park component in recognition that the Norman Tax Increment Finance Authority ("NTIFA") still owes \$75,000 in obligated UNP Business Improvement District contributions. Additionally, \$175,000 was allocated in a previous Development Agreement for surface parking at Legacy Park. The parking lot has been designed and is under construction. The remaining funds in the Legacy Park category under this proposal is \$250,000. Obligations related to repayment of Legacy Park costs based on Lifestyle Center development have been deleted as set forth in the adopted Term Sheet.

Town Center Incentive Components: The Agreement, consistent with the adopted Term Sheet and the 2019 Plan, provides that the Developer can access "Town Center" (formerly "Lifestyle Center") funding if all of the following criteria are met by the proposal:

- (a) Costs are needed to support retail or entertainment development in the area previously designated as the "Lifestyle Center"; and
- (b) Costs are needed to support a retail or entertainment user not already located in Norman; and
- (c) If the costs are associated with a retail user, then anticipated retail sales of at least \$300

per square foot (for stores larger than 10,000 square feet) and \$400 per square foot (for stores 10,000 square feet or less) must be demonstrated based on past performance in communities with similar demographics to Norman; and

- (d) If the costs are associated with an entertainment user, then no minimum sales per square foot standard applies; however, the user must present an entertainment option that does not already exist in Norman; and
- (e) parcel development plan must incorporate urban design elements of walkability and connectivity, as determined by the UNP Architectural Review Board (which will stay in place even with the end of the increment); and
- (f) The user must either purchase land or sign a minimum 3-year lease.

The Agreement sets a deadline to receive Town Center funds of June 30, 2026. As set forth in the adopted Term Sheet, the associated penalties in prior development agreements for failure to construct a Town Center by June 30, 2023 or June 30, 2026 if incorporating urban design elements, are waived. The City Manager, as General Manager of the Norman Tax Increment Finance Authority (NTIFA), will be responsible for determining if all of the criteria have been met. If they haven't been met, then incentives can only be granted upon approval of a development agreement by Council/NTIFA.

Economic Development Components: The final component is the Economic Development Project Costs. UNP, LLC has agreed to re-purchase the University North Park Corporate Center office space land from the Norman Economic Development Coalition (NEDC) for a negotiated price that at a minimum would cover the outstanding debt incurred by NEDC to purchase the UNP Corporate Center land as well as the UNP Advanced Manufacturing land (around \$3.3 million). The amount in the Economic Development Category is reduced to \$1,425,000 in this Agreement and in the proposed 2019 UNP TIF Project Plan. The Agreement addresses the rights of first refusal of Immuno Mycologics, Incorporated (IMMY) to purchase additional tracts in the UNP Advanced Manufacturing Center, as well as certain development requirements to ensure quality jobs are provided through the development of the UNP Advanced Manufacturing Center. Additionally, and consistent with Council discussions related to ensuring NEDC is not left holding debt for this land, the commitment under Development Agreement 6 of NEDC to reimburse the NTIFA for City TIF funds spent on economic development is referenced in this Agreement as being released by an amendment to Development Agreement No. 6. This amendment will be considered separately by Council on November 5, 2019. Other previous requirements related to the Economic Development component generally remain intact.

Additional Development Agreement Components: UNP, LLC and UTC, LLC remain obligated to dedicate any public rights-of-way and easements needed for future development within University North Park to the City at no cost to the City. All other obligations from prior development agreements are terminated and released except as modified within the Agreement. The final section (Section 33) sets forth the settlement and release of liability related to the prior Project Plan and associated development agreements. This was specifically

requested by Council for inclusion in the document.

RECOMMENDATION: The Amended and Restated Master Operating Agreement is consistent with prior discussions and actions by a majority of City Council. Staff forwards to Council for consideration in conjunction with the 2019 Amended and Restated Project Plan and related agreements and transactions.