

**REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY
AND
JEFF AND GAYLE HAYNES
CHAPTER 380 ECONOMIC DEVELOPMENT AND PROJECT PLAN
IMPLEMENTATION AGREEMENT**

WHEREAS, *JEFF AND GAYLE HAYNES*, individually and dba Side Street Grill (hereinafter “SIDE STREET”), is entering into this Chapter 380 Economic Development and Project Plan Implementation Agreement (this “Agreement”) pursuant to a program initiated by ***REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY*** (hereinafter “TIRZ”) pursuant to Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code, for the primary purpose of renovating and improving an historic building/restaurant Project known as the SIDE STREET (the “Project”) located wholly within Reinvestment Zone Number One in the “Town Center” area of the TIRZ of McKinney, Texas; and

WHEREAS, the TIRZ has agreed to an economic development grant to SIDE STREET based on the timely satisfaction of the conditions and upon the timely completion of the Project, including but not limited to certain public infrastructure improvements to SIDE STREET which public infrastructure is necessary to provide adequate utility service and fire suppression protection to the Project; and

WHEREAS, the TIRZ has the authority under Section 311.010(h) and Chapter 380 of the Texas Local Government Code to make loans or grants of TIRZ funds for the purposes of promoting local economic development and stimulating business and commercial activity within the TIRZ; and

WHEREAS, the TIRZ has established the Project as an eligible project under the TIRZ Project Plan as required by law and determines that a conditional grant to SIDE STREET of its funds will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the TIRZ and the City of McKinney, Texas; and

WHEREAS, the TIRZ has concluded and hereby finds that this Agreement clearly promotes economic development in the TIRZ and, as such, meets the requisites under Section 311.101(h) and Chapter 380 of the Texas Local Government Code and further, is in the best interests of the TIRZ, SIDE STREET and the City of McKinney, Texas; and

WHEREAS, the City Council has considered and approved this Agreement pursuant to applicable law.

NOW, THEREFORE, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TIRZ and SIDE STREET agree as follows:

SECTION 1. TERM

This Agreement shall be effective from the Effective Date until July 31, 2013, unless terminated sooner under the provisions herein.

SECTION 2. DEFINITIONS

The following words shall have the following meanings when used in this Agreement.

- a. Agreement. The word "Agreement" means this Chapter 380 Economic Development and Project Plan Implementation Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- b. Grant. The word "Grant" means a payment to SIDE STREET under the terms of this Agreement of up to \$13,000 in eligible Project costs.
- c. Grant Submittal Package. The words "Grant Submittal Package" mean the documentation required to be supplied to TIRZ as a condition of receipt of any Grant.
- d. Project. The word "Project" means the renovations to SIDE STREET, including the required utility and fire suppression improvements, located generally at 216 East Virginia Street, McKinney, TX, 75069 and as more particularly shown on Exhibit A, attached hereto and made a part hereof for all purposes, (the "Eligible Costs").
- e. Side Street. The words "Side Street" mean Jeff and Gayle Haynes, jointly and severally, including their heirs and assigns.
- f. TIRZ. The letters "TIRZ" means Reinvestment Zone Number One, City of McKinney. For purposes of this Agreement, TIRZ's address is 222 N. Tennessee, McKinney, Texas 75069.

SECTION 3. GRANT FUNDING OBLIGATION OF TIRZ

During the term of this Agreement, TIRZ shall fund a one-time grant in the amount up to Thirteen Thousand and No/100 Dollars (\$13,000.00) for Project's Eligible Costs payable upon the satisfaction of the express terms and conditions described in Section 4 below. Subject to SIDE STREET's continuous satisfaction of Section 4 below, the TIRZ agrees to process the Grant within thirty (30) days after receipt of SIDE STREET's Grant Submittal Package. Notwithstanding the foregoing, the Grant shall not be funded until i) the SIDE STREET satisfies all applicable obligations in Section 4 and ii) the TIRZ has sufficient funds in the TIRZ Fund to satisfy the entire Grant.

SECTION 4. OBLIGATIONS OF SIDE STREET

While this Agreement is in effect, SIDE STREET shall comply with the following terms and conditions to be eligible for any Grant; as such conditions are described or may apply:

- a. SIDE STREET shall fund and construct the Project on or before July 31, 2013.
- b. SIDE STREET shall submit a Grant Submittal Package to the TIRZ staff consisting of (i) the issued building permit(s), final certificate of occupancy, a Bills Paid Affidavit in the form of attached Exhibit A, and "as built" plans for the private and any public improvements shown on Exhibit B, and (ii) all cost and payment documentation to SIDE STREET's general contractor, Allied DB, Inc. for the Eligible Costs. The TIRZ staff, or its designee, shall verify that the expenditures were made in such amounts prior to any Grant disbursement.
- c. SIDE STREET shall be in compliance with all applicable City of McKinney codes, state and federal laws, and local ordinances applicable to the Project.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an event of default under this Agreement:

- a. TIRZ's failure to process any Grant payment to SIDE STREET accordance with Section 3 of this Agreement.
- b. SIDE STREET's violation or failure to perform any of the covenants contained in Section 4 hereinabove.

SECTION 6. EFFECT OF AN EVENT OF DEFAULT

In the event of default under Section 5, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement.

As long as it shall not be in default, SIDE STREET shall further have the power to enforce specific performance to collect amounts owing upon TIRZ's default without terminating this Agreement. No action shall lie for punitive damages, and no special or consequential damages shall be recovered by either party. SIDE STREET shall be entitled to receive from TIRZ any Grants due SIDE STREET through the date of termination.

If McKinney exercises its rights to terminate the Agreement, SIDE STREET shall not be entitled to any Grant payments hereunder.

SECTION 7. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all of the parties hereto.
- b. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- c. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. TIRZ warrants and represents that the individual executing this Agreement on behalf of TIRZ has full authority to execute this Agreement and bind TIRZ to the same. SIDE STREET warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- d. **No Waiver of Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

- e. **Execution of Agreement.** The TIRZ has authorized its Chairman to execute this Agreement on behalf of TIRZ.
- f. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- g. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- h. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by SIDE STREET and TIRZ.
- i. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

[Remainder of Page Intentionally Left Blank]

JEFF AND GAYLE HAYNES
Individually and dba Side Street Grill

By: _____
Name: JEFF HAYNES
Title: Individually and dba Side Street Grill
Date: _____

By: _____
Name: GAYLE HAYNES
Title: Individually and dba Side Street Grill
Date: _____

***REINVESTMENT ZONE NUMBER ONE, CITY OF
MCKINNEY***

By: _____
Name: DON DAY
Title: CHAIRMAN
Date: _____

ATTEST:

By: _____
Name: _____
Title: TIRZ SECRETARY
Date: _____

APPROVED AS TO FORM:

MARK S. HOUSER
Attorney for Reinvestment Zone Number One,
City of McKinney

PREPARED IN THE OFFICES OF:
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