

**REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY
AND DFA 205, LP
CHAPTER 380 ECONOMIC DEVELOPMENT AND
PROJECT PLAN IMPLEMENTATION AGREEMENT FOR
205 W. LOUISIANA STREET OFFICE BUILDING PROJECT**

WHEREAS, *DFA 205, LP* (hereinafter “DFA”) is entering into this Chapter 380 Economic Development and Project Plan Implementation Agreement for a new building construction project (this “Agreement”) pursuant to a program initiated by ***REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY*** (hereinafter the “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 installing underground utilities and fire safety systems for a new two-story office/retail/restaurant building with one floor of underground parking being constructed at 205 W. Louisiana Street, McKinney, Texas (“Structure”), and which project is known as the ***205 W. LOUISIANA STREET OFFICE BUILDING PROJECT*** (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 DFA based on the timely satisfaction of the conditions and upon the timely completion of the Project, including but not limited to designing, constructing and installing underground utilities and fire safety systems in strict conformity to the ordinances of the City of McKinney, Texas (“City”), and approval of a Certificate of Appropriateness for the Project; and

WHEREAS, the TIRZ has the authority under Section 311.010(h) of the Tax Increment Financing Act, as amended, 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 DFA 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; 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 311.011(h) of the Tax Increment Financing Act, as amended, and Chapter 380 of the Texas Local Government Code and further, is in the best interests of the TIRZ, DFA, and the City; and

WHEREAS, the City Council of the City of McKinney, Texas 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, the TIRZ and DFA agree as follows:

SECTION 1. TERM

This Agreement shall be effective from the Effective Date until October 1, 2018, 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, schedules, and amendments attached to this Agreement from time to time, if any.
- b. Grant. The word "Grant" means a disbursement to DFA under the terms of this Agreement of an amount not to exceed Twenty-Five Thousand and Zero/100 Dollars (\$25,000.00) in Eligible Costs (as hereinafter defined).
- c. Grant Submittal Package. The words "Grant Submittal Package" mean the documentation required to be supplied to the TIRZ as a condition of receipt of any Grant.
- d. Project. The word "Project" means the 205 W. Louisiana Street Office Building Project and involves the installation of underground utilities and a fire safety system including, but not necessarily limited to, a fire sprinkler system and a fire alarm system within the new two-story office/retail/restaurant building and underground parking garage under construction at 205 W. Louisiana Street, McKinney, Texas 75069, in strict conformity to the City's Ordinances, and approval of a Certificate of Appropriateness for the Project. Approved expenditures for the Project shall be referred to as the "Eligible Costs".
- e. DFA. The word "DFA" means DFA 205, LP, a Texas limited partnership, including its assigns and successors-in-interest. For purposes of this Agreement, DFA's address is 110 E. Louisiana Street, Suite 200, McKinney, Texas 75069.

- 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, the TIRZ shall make a one-time Grant payment in an amount not to exceed **Twenty-Five Thousand and Zero/100 Dollars (\$25,000.00)** for Eligible Costs, which shall be payable upon the satisfaction of the express terms and conditions described in Section 4 below. Subject to DFA’s complete and continuous satisfaction of the Section 4 conditions, the TIRZ agrees to process the Grant within thirty (30) days after receipt of DFA’s complete and correct Grant Submittal Package. Notwithstanding the foregoing, the Grant shall not be funded until: (1) DFA satisfies all applicable obligations in Section 4 and (2) the TIRZ has sufficient funds in the TIRZ Fund to satisfy the entire Grant.

SECTION 4. OBLIGATIONS OF DFA

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

- a. DFA shall fund and complete the Project on or before October 1, 2018, and shall receive a final “green tag” inspection for the Project at the office building located at 205 W. Louisiana Street on or before that date;
- b. DFA shall submit a Grant Submittal Package to the TIRZ staff consisting of: (1) the approved Certificate of Appropriateness, (2) the issued building permit(s), final certificate of occupancy, a Bills Paid Affidavit in the form of **Exhibit “A,”** and “as-built” plans for any and all Project work shown on **Exhibit “B,”** both of which exhibits are attached hereto, and (3) all cost and payment documentation of DFA and its general contractor for the Eligible Costs. The TIRZ staff, or its designee, shall verify that the expenditures were made in such amounts prior to disbursement of the Grant.
- c. DFA shall obtain a Certificate of Appropriateness from the City for the Project and the Project shall conform to all City 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. The TIRZ’s failure to process any Grant payment to DFA in accordance with Section 3 of this Agreement.

- b. DFA'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 DFA shall not be in default, DFA shall further have the power to enforce specific performance to collect amounts owing upon the 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. DFA shall be entitled to receive from TIRZ any Grant payments due DFA through the date of termination.

If the TIRZ exercises its rights to terminate this Agreement, DFA 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. The TIRZ warrants and represents that the individual executing this Agreement on behalf of the TIRZ has full authority to execute this Agreement and bind TIRZ to the same. DFA warrants and represents that it has full authority to execute this Agreement.
- 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 the 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 in Section 2. 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.
- g. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by DFA and the TIRZ.
- h. **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.

DFA 205, LP, a Texas Limited Partnership, acting by and through its General Partner **DFA, LTD.**, a Texas limited liability company

By: _____

Name: _____

Title: _____

Date Signed: _____

[Signatures continued on following page.]

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

By: _____
TRACY RATH
Chairperson

Date Signed: _____

ATTEST:

By: _____
Name: Sandy Hart, TRMC, MMC
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:
BROWN & HOFMEISTER, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

Exhibit "A"

BILLS PAID AFFIDAVIT

Date: _____

Project Name: _____

Owner's Name: _____

Owner's Mailing Address:

Contractor's Name(s): _____

Contractor's Mailing Address(es):

_____	_____
_____	_____
_____	_____
_____	_____

Affiant's Name: _____

Affiant's Mailing Address:

Phase/Lots and Blocks: _____

Improvements: _____

THE STATE OF TEXAS §

COUNTY OF COLLIN §

Before me, the undersigned, on this day personally appeared _____, known to me to be a credible person (hereinafter called “Affiant”), and who, being duly sworn, upon his oath declares and acknowledged that the following statements are true and within the personal knowledge of Affiant:

1. Affiant owns the property and the Project (“Owner”) that is the subject of this Bills Paid Affidavit, and has personal knowledge of the facts stated in this affidavit.

2. Affiant understands that the Reinvestment Zone Number One, City of McKinney, Texas and/or the City of McKinney, Texas (“TIRZ” and “City,” respectively) have required this affidavit as a condition of a grant of incentives under an economic development agreement involving the Property identified above located within the City of McKinney, Collin County, Texas (the “Project”).

3. Owner has constructed and installed, or caused to be constructed and installed, certain private building improvements, public improvements or infrastructure required by the TIRZ or the City and necessary to serve the Project.

4. Affiant has actual knowledge that all bills owed by Owner to others for materials supplied or labor performed in connection with the Project have been fully paid and satisfied.

5. **OWNER AGREES TO INDEMNIFY AND HOLD THE TIRZ AND THE CITY HARMLESS FROM AND AGAINST ANY LOSS OR EXPENSE RESULTING FROM FALSE OR INCORRECT INFORMATION IN THIS AFFIDAVIT.”**

OWNER:

Name: _____

SUBSCRIBED AND SWORN TO before me on this ____ day of _____, 2017, by _____.

Notary Public, State of Texas

Exhibit “B”

DESIGN PLANS