

**REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY
AND
TOTEM HOLDINGS, LLC
CHAPTER 380 ECONOMIC DEVELOPMENT AND PROJECT PLAN
IMPLEMENTATION AGREEMENT FOR THE 119 S. TENNESSEE STREET –
W.O.W. HOME FAÇADE IMPROVEMENT PROJECT**

WHEREAS, *TOTEM HOLDINGS, LLC*, a Texas limited liability company (hereinafter “Applicant”), is entering into this Chapter 380 Economic Development and Project Plan Implementation Agreement for Façade Improvements (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 a historic building situated at 119 S. Tennessee Street, McKinney, Texas (“Structure”), and which project is known as the ***119 S. TENNESSEE STREET – W.O.W. HOME FAÇADE IMPROVEMENT 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 the Applicant based on the timely satisfaction of the conditions and upon the timely completion of the Project, including installing a metal awning, and restoring the front façade of the Structure; 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 the Applicant 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, the Applicant, 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 the Applicant, agree as follows:

SECTION 1. TERM

This Agreement shall be effective from the Effective Date until September 30, 2021, 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. Applicant. The word "Applicant" means Totem Holdings, LLC, a Texas limited liability company, including its assigns and successors-in-interest. For purposes of this Agreement, Totem Holdings, LLC's address is 119 S. Tennessee Street, McKinney, TX 75069.
- c. Grant. The word "Grant" means a payment to the Applicant under the terms of this Agreement of an amount not to exceed Twenty-Two Thousand Six Hundred Thirty and No/100 Dollars (\$22,630.00) in eligible Project costs.
- d. 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.
- e. Project. The word "Project" means certain renovations to the historic building located generally at 119 S. Tennessee Street, McKinney, Texas, 75069. The specific renovations eligible for Project reimbursement shall include, and are limited to, installing a metal awning, and restoring the front façade of the Structure. Approved expenditures for the Project are referred to as the "Eligible Costs".
- 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 an amount not to exceed **Twenty-Two Thousand Six Hundred Thirty and No/100 Dollars (\$22,630.00)** for Eligible Costs, which shall be payable upon the satisfaction of the express terms and conditions described in Section 4 below. Subject to the Applicant's complete and continuous satisfaction of the Section 4 conditions, TIRZ agrees to process the Grant within thirty (30) days after receipt of the Applicant's complete and correct Grant Submittal Package. Notwithstanding the foregoing, the Grant shall not be funded until: (1) the Applicant 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 APPLICANT

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

- a. The Applicant shall (1) fund and complete the Project on or before September 30, 2021, and (2) satisfy the requisites for, and receive upon final inspection, if at all, a "green tag" for the Project at the historic building at 119 S. Tennessee Street, on or before that date;
- b. The Applicant shall submit a Grant Submittal Package to the TIRZ staff consisting of: (1) 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 any and all Project work shown on **Exhibit "B,"** both of which are attached hereto, and (2) all cost and payment documentation of the Applicant 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 any Grant disbursement.
- c. The Applicant 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 the Applicant in accordance with Section 3 of this Agreement.
- b. The Applicant'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, the Applicant 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. Applicant shall be entitled to receive from TIRZ any Grants due the Applicant through the date of termination.

If McKinney exercises its rights to terminate the Agreement, the Applicant 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. The Applicant 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 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.
- h. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to execute this Agreement by the Applicant 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.

TOTEM HOLDINGS, LLC,
a Texas limited liability company

By: _____
Name: DONALD VALADE
Title: Owner
Date: _____

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

By: _____
Name: SCOTT ELLIOT
Title: Chairman
Date: _____

ATTEST:

EMPRESS DRANE
TIRZ Secretary

APPROVED AS TO FORM:

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

Exhibit "A"

BILLS PAID AFFIDAVIT

Date: _____

Project Name: _____

Owner Name: _____

Owner's Mailing Address:

Contractor 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 and officer of Totem Holdings, LLC, a Texas partnership (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 has personal knowledge of the facts stated in this affidavit. Affiant has full authority to make the agreements in this affidavit on behalf of Owner(s) Haddington Fund LP (hereinafter referred to as "Owner" whether one or more).

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

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

5. Applicant agrees to indemnify and hold TIRZ and City harmless from and against any loss or expense resulting from false or incorrect information in this affidavit.

[Signatures begin on following page.]

APPLICANT:

Totem Holdings, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS,
COUNTY OF COLLIN

SUBSCRIBED AND SWORN TO before me on this ____ day of November, 2020, by _____, in his/her capacity as _____, of **Totem Holdings, LLC**, a Texas limited liability company, known to me to be the person whose signature is subscribed to the foregoing instrument, and acknowledged to me that he/she consented to the foregoing instrument and the performance of the referenced Project on behalf of and as the act of **Totem Holdings, LLC**.

Notary Public, State of Texas

Exhibit “B”

AS-BUILT PLANS