

**REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY
THE CITY OF MCKINNEY, TEXAS
AND
BRADLEY S. KIDWELL FAMILY LP
CHAPTER 380 ECONOMIC DEVELOPMENT AND PROJECT PLAN
IMPLEMENTATION AGREEMENT**

WHEREAS, *BRADLEY S. KIDWELL FAMILY LP*, a Texas family limited partnership (hereinafter “FLOUR MILL”), 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 constructing, renovating and operating a mixed use historic Project known as the Historic Flour Mill (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 FLOUR MILL based on the timely satisfaction of the conditions contained in a related North Central Texas Council of Governments (“NCTCOG”) grant and upon the timely completion of the Project, including but not limited to certain public infrastructure funded by the McKinney Community Development Corporation to FLOUR MILL which public infrastructure is necessary to provide adequate access 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 FLOUR MILL 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, FLOUR MILL and the City of McKinney, Texas; and

WHEREAS, the City Council has considered and approved this Agreement authorizing the TIRZ pursuant to applicable law; and

WHEREAS, the City of McKinney, Texas (“CITY”) desires to participate in an economic development project and program under Chapter 380 of the Texas Local Government Code, for the primary purpose of constructing, renovating and operating a mixed use historic Project known as the Historic Flour Mill to enhance businesses and job growth in the Town Center area of the city.

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, FLOUR MILL and CITY agree as follows:

SECTION 1. TERM

This Agreement shall be effective from the Effective Date until December 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. CITY. The word “CITY” means the City of McKinney, Texas. For purposes of this Agreement, TIRZ’s address is 222 N. Tennessee, McKinney, Texas 75069.
- c. FLOUR MILL. The words “FLOUR MILL” mean the Bradley S. Kidwell Family LP, a Texas family limited partnership, including its successors and assigns.
- d. Grant. The word “Grant” means a payment to FLOUR MILL under the terms of this Agreement.
- e. 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.
- f. MCDC Incentive. The words “MCDC Incentive” mean the related incentive agreement(s) by and between the McKinney Community Development Corporation and FLOUR MILL dated effective _____, 2011, a copy of which is attached hereto as Exhibit A, relating to the Project.

- g. NCTCOG Grant. The words “NCTCOG Grant” mean the related grant funding agreement(s) for \$1,760,000 by and between the City of McKinney, Texas, the North Central Texas Council of Governments, and the State of Texas, a copy of which is attached hereto as Exhibit B, dated effective _____, 2011 for construction and renovation of the FLOUR MILL and related public infrastructure in McKinney, Texas.
- h. Project. The word “Project” means the Historic Flour Mill, including the required NCTCOG Grant and MCDC infrastructure improvement, located generally at 415 E. Louisiana Street, McKinney, TX, 75069.
- i. 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 / IMPACT FEE AND PARK DEDICATION FEE WAIVER BY CITY

During the term of this Agreement, TIRZ shall fund a one-time grant in the amount equal to Two Hundred Thousand and No/100 Dollars (\$200,000.00) payable upon the satisfaction of the express terms and conditions described in Section 4 below. Subject to FLOUR MILL’s continuous satisfaction of Section 4 below, the TIRZ agrees to process the Grant within thirty (30) days after receipt of FLOUR MILL’s Grant Submittal Package. Notwithstanding the foregoing, the Grant shall not be funded until 1) the FLOUR MILL satisfies all applicable obligations of the NCTCOG Grant and 2) the TIRZ has sufficient funds in the TIRZ Fund to satisfy the entire Grant. So long as no default exists at the time that FLOUR MILL is required to pay applicable roadway, sewer and water impact fees and park dedication fees, CITY agrees to waive all of said fees for the Project.

SECTION 4. OBLIGATIONS OF FLOUR MILL

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

- a. FLOUR MILL shall fund and complete construction of all private development phases, including but not limited to Phase 2(a), Phase 2(b), and Phase 3(a) of the Project and satisfy all conditions of the private developer (as specifically interlineated on Exhibit B attached hereto and made a part hereof) and further as described in the NCTCOG Grant on or before March 1, 2013. In addition, FLOUR MILL shall satisfy all conditions contained in the MCDC Incentive on or before _____, as such are more particularly described in Exhibit A attached hereto and made a part hereof.

- b. FLOUR MILL shall submit a Grant Submittal Package to the TIRZ staff consisting of (i) the “as built” plans for the private developer-constructed improvements (Phase 2(a), Phase 2(b), and Phase 3(a)) required under Exhibit A and Exhibit B, (ii) all other submittals required by the NCTCOG Grant and the MCDC Incentive, and (iii) all cost and payment documentation for the private developer-constructed improvements. The TIRZ staff, or its designee, shall verify that the expenditures were made in such amounts prior to any Grant disbursement.
- c. FLOUR MILL shall convey to CITY, at no cost to CITY and upon CITY’s written request, a triangular-shaped parcel of land on the south side of the Project, containing approximately 2,185 sf, and any additional strips of land owned by FLOUR MILL to allow CITY to make any required infrastructure improvements described in the NCTCOG grant. FLOUR MILL shall make any conveyances under this paragraph free and clear of all encumbrances, save and except those to which CITY may consent in writing.
- d. FLOUR MILL shall be in compliance with all terms and conditions of the NCTCOG Grant and the MCDC Incentive throughout the term of this Agreement, including but not limited to, compliance with all applicable City of McKinney codes, state and federal laws, and local ordinances applicable to the Project.
- e. So long as FLOUR MILL shall remain in continuous compliance with the terms of this Agreement, the NCTCOG Grant and the MCDC Incentive, the Project’s satisfaction of the 50% on-site parking requirement for non-residential uses shall be determined by a count of those public parking spaces located within five hundred (500’) feet of the Project’s property line.

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 FLOUR MILL in accordance with Section 3 of this Agreement.
- b. FLOUR MILL’s violation or failure to perform any of the covenants contained in Section 4 hereinabove.
- c. CITY’s failure to grant the waiver of impact fees and park dedication fees contained in Section 3 of this Agreement.

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, FLOUR MILL 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. FLOUR MILL shall be entitled to receive from TIRZ any Grants due FLOUR MILL through the date of termination.

If TIRZ or CITY exercises its rights to terminate the Agreement, FLOUR MILL shall not be entitled to any Grant payments hereunder and CITY shall thereafter have its rights under Section 7 relative to the Project.

SECTION 7. OPTION TO PURCHASE PROJECT UPON TERMINATION BY CITY OR TIRZ

FLOUR MILL hereby grants to CITY (assignable by City to TIRZ) an option to purchase all property comprising the Project, both land and improvements, (the "Option") for a price equal to the then Fair Market Value (defined below) by giving written notice to FLOUR MILL of CITY's election to exercise the Option on or before the date that is 90 days after the date of Termination under Paragraph 6 above (the "Option Period"). Upon the exercise of this Option by CITY, a closing will take place within ninety (90) days thereof at a title company to be selected by the parties. FLOUR MILL will not convey or enter an agreement to convey the Property to any party other than CITY during the Option Period.

For purposes of this section, "Fair Market Value" shall mean an amount to be agreed to by FLOUR MILL and CITY. If, however, if FLOUR MILL and CITY cannot agree on the Fair Market Value within thirty (30) days after CITY exercises the Option, then the Fair Market Value shall be determined by appraisal. The appraisal shall be made with each of FLOUR MILL and CITY choosing one appraiser who is a licensed real estate broker or agent, with such two appraisers picking a third appraiser (the "Deciding Appraiser"). FLOUR MILL's appraiser and CITY's appraiser shall each submit a fair market value to the Deciding Appraiser, and the Deciding Appraiser shall select either the fair market value determined by FLOUR MILL's appraiser or CITY's appraiser and the Deciding Appraiser's decision shall control and govern and be the purchase price for the sale of the Property from FLOUR MILL to CITY. FLOUR MILL and CITY shall pay for their respective appraisers and shall share equally the cost of the Deciding Appraiser.

SECTION 8. 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 Only on Effective Date.** This Agreement shall become a binding obligation on the parties on the Effective Date. 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. FLOUR MILL 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. CITY warrants and represents that the individual executing this Agreement on behalf of CITY has full authority to execute this Agreement and bind CITY 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. The CITY has authorized its City Manager to execute this Agreement on behalf of the CITY.
- 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 on which NCTCOG approves the NCTGOG grant. If no approval is obtained by August 1, 2011, this Agreement shall be null and void.

- j. **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]

BRADLEY S. KIDWELL FAMILY LP
a Texas family limited partnership

By: _____

Date Signed: _____

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

By: _____
Name: DON DAY

Title: CHAIRMAN

Date Signed: _____

ATTEST:

TIRZ Secretary

APPROVED AS TO FORM:

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

CITY OF MCKINNEY, TEXAS

By: _____
Name: JASON GRAY
Title: CITY MANAGER
Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

PREPARED IN THE OFFICES OF:
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