



CITY OF MCKINNEY, TEXAS

Agenda

Reinvestment Zone Number One

Tuesday, August 21, 2018

5:00 PM

Council Chambers
222 N. Tennessee Street
McKinney, Texas

CALL TO ORDER

REGULAR ITEMS

18-712 [Conduct a Public Hearing to Consider/Discuss/Act on an Amendment to the Chapter 380 Economic Development and Project Plan Implementation Agreement with DFA 205, LP for the project at 205 W. Louisiana Street](#)

Attachments: [18-712 Extension Request Letter](#)
 [18-712 First Amendment to TIRZ Agreement](#)
 [Executed TIRZ Agreement](#)

ADJOURN

Posted in accordance with the Texas Government Code, Chapter 551, on the 17th day of August, 2018 at or before 5:00 p.m.

Empress Drane
City Secretary

In accordance with the Americans with Disabilities Act, it is the policy of the City of McKinney to offer its public programs, services, and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation, please contact the ADA Coordinator at least 48 hours in advance of the event. Phone 972-547-2694 or email contact-adacompliance@mckinneytexas.org. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility. ADA grievances may also be directed to the ADA Coordinator or filed online at <http://www.mckinneytexas.org/ada>.



18-712

TITLE: Conduct a Public Hearing to Consider/Discuss/Act on an Amendment to the Chapter 380 Economic Development and Project Plan Implementation Agreement with DFA 205, LP for the project at 205 W. Louisiana Street

MEETING DATE: August 21, 2018

DEPARTMENT: Planning

CONTACT: Matt Robinson, AICP, Planning Manager
Jennifer Arnold, AICP, Interim Director of Planning

RECOMMENDED ACTION:

- Staff recommends approval of the amendment extending the deadline for the completion of the fire safety improvements to December 31, 2018 as outlined in the proposed amendment.

ITEM SUMMARY:

- The proposed amendment to the Chapter 380 Economic Development Agreement with DFA 205, LP is to extend the deadline of the obligation to complete the façade improvements by approximately 122 days (from September 1, 2018 to December 31, 2018).
- Under the agreement approved by the TIRZ #1 Board on December 5, 2017, DFA 205, LP were to:
 - Install underground utilities and a fire safety system, that includes but is not limited to a fire sprinkler system and a fire alarm system; and
 - Receive a “green tag” inspection of the improvements by September 1, 2018.
- Due to delays with excavation for the underground garage and other construction related issues, the completion of the project has been delayed and as such will not be completed by the stated September 1, 2018 deadline.
- Under the proposed amendment, the specific obligations of DFA 205, LP to install underground utilities and fire safety system are amended as follows:

- DFA 205, LP shall fund and complete the project on or before December 31, 2018, and shall receive a final “green tag” inspection for the project at 205 W. Louisiana Street on or before that date.
- Except as specifically amended above, all terms and provisions of the original agreement will remain in full force and effect.

BACKGROUND:

- The TIRZ #1 Board approved a Chapter 380 Economic Development Agreement with DFA 205, LP for fire safety improvements at their December 5, 2017 meeting.

FINANCIAL IMPACT:

- N/A

SUPPORTING MATERIALS:

[18-712 Extension Request Letter](#)

[18-712 First Amendment to TIRZ Agreement](#)

[Executed TIRZ Agreement](#)

**DFA, LTD
110 E. LOUISIANA STREET
MCKINNEY, TEXAS 75069
972-562-0267**

August 14, 2018

MATT ROBINSON
CITY OF MCKINNEY
MCKINNEY, TEXAS 75069

RE: REQUEST FOR EXTENSION OF TIRZ GRANT FOR \$25,000.00
REIMBURSEMENT FOR 205 W. LOUISIANA, MCKINNEY TX.

Dear Matt:

Please accept this letter as my request to extend the completion date of the 28,700 square foot mixed use building under construction at 205 W Louisiana Street in downtown McKinney until December 31, 2018. The project was delayed due to rock discovered in the excavation of the underground garage, weather delays and other construction related problems.

Thank you for your help.

Sincerely

Don Day
DFA 205 LP
BUILDING OWNER

**FIRST AMENDMENT TO
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**

This First Amendment to the Chapter 380 Economic Development Agreement and Project Plan Implementation Agreement (the "First Amendment") by and between Reinvestment Zone Number One, City of McKinney ("TIRZ") and DFA 205, LP, a Texas limited partnership ("DFA") is entered into by and between TIRZ and DFA.

WHEREAS, DFA entered into that certain Chapter 380 Economic Development and Project Plan Implementation Agreement for a new building construction project ("Original Agreement") 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, DFA and TIRZ now desire to extend the term of the Project.

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 OF ORIGINAL AGREEMENT

Section 1, entitled "TERM" of the Original Agreement is hereby amended by the replacement of existing Section 1 with a new Section 1 to read as follows:

"SECTION 1. TERM

This Agreement shall be effective from the Effective Date until December 31, 2018, unless terminated sooner under the provisions herein."

SECTION 2. OBLIGATIONS OF DFA

Section 4, entitled "Obligations of DFA," of the Original Agreement is hereby amended by the replacement of existing Paragraph a of Section 4 with a new Paragraph a to read as follows:

“a. DFA shall fund and complete the Project on or before December 31, 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;”

SECTION 3. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this First Amendment:

- (a) Except as specifically amended herein, all provisions of the Original Agreement shall remain unchanged and in full force and effect and exist as if set forth herein in their entirety.
- (b) In the event of any conflict or inconsistency between the Original Agreement and this First Amendment, the terms of this First Amendment shall control.
- (c) This First Amendment is and shall be effective on the date of execution by the last party to sign this First Amendment.

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
Chairman

Date Signed: _____

ATTEST:

By: _____
Name: Empress Drane
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

**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 September 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 September 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.

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

By: Tracy Rath
TRACY RATH
Chairperson

Date Signed: _____

ATTEST:

By: Sandy Hart
Name: Sandy Hart, TRMC, MMC
Title: TIRZ SECRETARY
Date: 12/12/17

APPROVED AS TO FORM:

Mark S. Houser
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

- 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: _____

11-30-17

[Signatures continued on following page.]